

# Terms and Conditions

## 1. Scope of Application, Contractual Partners

a) The following General Terms and Conditions (hereinafter referred to simply as "terms" or "T&C") apply to all, including future, deliveries and services between the contracting party (buyers and customers are hereinafter jointly referred to as "Customer") and Wefatherm GmbH, Adolf-Oesterheld-Str. 28, 31515 Wunstorf, Germany (hereinafter referred to as "Wefatherm" or "we"). They shall also be deemed as part of our offers, including consultancy and information services.

b) These terms apply to business customers/entrepreneurs, legal entities under public law or public-law special funds only (Section 14 of the German Civil Code).

c) Our terms apply exclusively. Any of the Customer's terms and conditions that contradict or deviate from these terms shall not be acknowledged or applied unless they have been expressly approved by us in writing. If we process an order, these T&C apply regardless of our potential knowledge of the Customer's terms and conditions conflicting with or deviating from ours. By accepting our offer, the Customer explicitly agrees to the application of our T&C and waives his right to assert his own conditions and terms.

d) Individual agreements concluded on a case-by-case basis (including addendums, amendments and additional agreements) shall in any case take precedence over these terms. The content of any such agreement shall be governed by a written contract or a written confirmation by us. Unless otherwise specified in these terms, legally relevant declarations and notifications which are to be submitted after the conclusion of the contract (e.g. setting of a deadline, termination) require written form in order to be legally valid. This also applies to the repeal of this written form requirement.

## 2. Contract

a) Our offers are subject to change without notice and non-binding, unless explicitly stated otherwise in the offer. Agreements become effective and binding only upon our written acceptance and conformation. The foregoing shall also apply to any oral agreements and any assurances given by our sales staff and other employees. If the Customer has not objected to our order confirmation in writing, its contents shall be deemed to be the binding content of the contract in all points.

b) Offers made by the Customer shall remain valid for 14 days after receipt and can be accepted by us within these 14 days. Acceptance requires a written declaration by Wefatherm. However, Wefatherm reserves the right to accept an order of the Customer by executing a delivery. Oral agreements before and after conclusion of the contract are only binding if they are confirmed by Wefatherm in writing.

## 3. Prices

a) Unless otherwise agreed, all prices are understood to be ex works or ex warehouse (EXW INCOTERMS 2010). Additional packaging costs as well as the legal sales tax applicable at the time of delivery are not included.

b) Prices are quoted in Euro (€) and are based on the exchange rates between domestic and foreign currencies, wage costs, raw material prices, import duties, taxes and other charges applicable at the time the agreement comes into force. If one or more of the above factors change due to exceptional circumstances before delivery has taken place, we are entitled to make reasonable price changes.

c) Any costs that may incur for customs, import, storage and other fees shall be borne by the Customer. Any taxes are also to be paid by the Customer.

#### **4. Methods of Payment, Consequences of Default**

a) Unless otherwise agreed, payment is due within 30 days upon the date of the invoice without any deduction. The payment is to be made in Euro. The relevant date for payment is the value date on our account. Payment periods which are stated on the order confirmation or invoice, in particular for the calculation of deadlines for cash discounts, begin with the invoice date.

b) The Customer shall be in default of payment with the expiry of the afore-mentioned contractual payment deadline. If the Customer is in default of payment, we have the right to charge default interest at a rate that is 9 % higher than the base interest rate of the German Federal Bank. If we are able to prove higher damages caused by the delay, we are entitled to claim these.

c) If the buyer does not fulfil the payment due within a reasonable period of time set by us, we are entitled to withdraw from all existing contracts and to claim damages for non-performance. Furthermore, in these cases we can demand the immediate return of the goods which are still in our property.

d) In case, after conclusion of the contract and before delivery, we become aware of specific circumstances regarding the economic relations of the Customer, by which our claims appear to be endangered in the light of reasonable commercial judgement, we may, at the Customer's discretion, attach the delivery to one of the following conditions: an advance payment or a security deposit. Without affecting further rights, we are entitled to demand advance payment before executing outstanding deliveries and - without withdrawing from the contract - to prohibit the resale and further use of goods subject to retention of title, as well as to demand the return of the goods at the Customer's expense. We may sell reclaimed goods on the free market. After deduction of all expenses, we will credit the remaining proceeds to the customer.

e) If the use of a letter of credit (L/C) as a means of payment is agreed, the letter of credit is a confirmed, irrevocable letter of credit in favour of Wefatherm. The letter of credit must cover the entire contract price and must be obtained by the Customer from a major bank within 15 days after the contract comes into force according to Article 2. The confirmation will be issued by a German bank. The letter of credit is subject to the "Uniform Customs and Practice for Documentary Credits, Revision 2007", ICC Publication No. 600 (ERA 600).

f) All court and out-of-court costs in connection with the collection of receivables incurred by Wefatherm due to the Customer's failure to pay on time, including fees of third parties engaged by Wefatherm for the collection of the receivables, shall be borne by the Customer.

g) If the Customer is in default of payment obligations from previous orders, Wefatherm reserves the right to process the order only after the Customer has fulfilled existing prior obligations.

h) Costs of payment transactions, especially in case of bank charges incurred by foreign bank transfers, shall be borne by the Customer.

i) We are entitled to assign the claims and receivables arising from our business relationship. If such an assignment of claims is carried out by us, the Customer is requested to pay to the assignee. Obligation of payment shall then be fulfilled upon receipt of the payment by the assignee.

## **5. Delivery**

a) The agreed delivery periods and delivery dates are always deemed non-binding and are conditional on the possibility of delivery, unless expressly agreed otherwise in writing. The agreed delivery period is deemed to have been met if we have notified the Customer of completion and readiness for collection by the time it expires, unless in exceptional cases the place of fulfilment has been agreed to be the Customer's place of business. If the agreed final delivery date is exceeded, any price increases made after this delivery date will not be at the Customer's expense, unless the delayed delivery is due to circumstances beyond Wefatherm's control.

b) Meeting the delivery obligation requires the timely and proper fulfilment of the obligations of the Customer. We reserve the right to raise the defence of non-performance of the contract. The Customer assures to provide correct and complete address data. Should there be additional costs for the shipment due to incorrect information, e.g. entirely new shipment, then the Customer has to bear these costs.

c) Deadlines and dates shall be extended, without affecting any further rights on our part, by the period during which the Customer fails to fulfil his own obligations - including those arising from other contracts. This shall also apply to preparatory efforts to be made by the Customer, e.g. the submission of documents for the execution of the contract.

d) If the delivery date is postponed due to force majeure or due to events for which we are not responsible and which make delivery considerably more difficult or impossible (strike, official orders, lockouts, operational disruptions, etc.), we are entitled to extend the delivery period accordingly. This also applies when such circumstances arise for suppliers if we are not at fault concerning provisional care (especially due to transport, import, export or manufacturing prohibitions). In these cases, the Customer shall not be entitled to compensation, rescission or other rights due to the delay of the delivery date. If such a hindrance lasts longer than 3 months and if the Customer has granted us a reasonable grace period for the delivery of the subject matter of the contract after the expiry of these 3 months, the Customer shall be entitled to withdraw from the unfulfilled part of the contract. In the case of a partial delivery already made, the buyer is only entitled to withdraw from the contract under the aforementioned conditions with regard to the unfulfilled part of the delivery. Payment for a partial delivery already made may not be refused on account of the unfulfilled part of the delivery.

e) If the Customer is in delay with the acceptance of the delivery, Wefatherm is entitled to withdraw from the contract after setting a reasonable grace period. If the Customer is responsible for the delay in acceptance, Wefatherm is entitled to flat-rate compensation for the damage caused by the Customer's delay in acceptance amounting to 10% of the agreed net order value for the non-accepted part of the delivery. Wefatherm shall also be entitled to this flat-rate compensation after withdrawing from the contract due to the Customer's default of acceptance. Further claims for damages and other rights of Wefatherm remain unaffected.

f) If an agreed delivery date is exceeded, the Customer is entitled to withdraw from the contract, if Wefatherm does not perform within the grace period of at least three weeks to be set by the Customer and if Wefatherm is responsible for this. The Customer does not have to set a period of grace if such is dispensable by law. The Customer's withdrawal from the contract must be

declared in writing and at the latest within two weeks after expiry of the grace period set by Wefatherm.

g) Before delivery or continuation of delivery, Wefatherm is entitled to demand sufficient security for the fulfilment of payment obligations or advance payment. If the Customer refuses to provide the required security, Wefatherm is entitled to withdraw from the contract. In this case, Wefatherm will receive compensation for all losses and/or damages that Wefatherm has incurred and will incur.

h) We are not obliged to make partial deliveries and partial services, but are entitled to do so unless the partial delivery or partial service is not reasonable for the buyer.

## **6. Shipping and Transfer of Risk**

a) Our deliveries and the related transfer of risk are generally ex works [EXW - Incoterms 2010]. If the goods are shipped to the Customer or to a place of delivery named by him at his request, the risk of accidental loss or accidental damage to the goods shall pass to the Customer as soon as the goods have been handed over to the person carrying out the transport or have left our warehouse for shipment. This applies irrespective of whether the goods are dispatched from the place of performance and who bears the transport costs. The transfer of risk also takes place as soon as the Customer is in default of acceptance.

b) Packaging, freight and shipping costs will be invoiced separately to the Customer and depend on the specific order. Packaging materials and modalities are determined by us.

c) Insurance for transport will only be taken out at the special request of the buyer and at his expense.

d) In the case of a separate agreement between us and the Customer, we will commission a forwarder or carrier. Wefatherm shall choose the transport route and the forwarder or carrier. In this case, the risk of accidental loss and accidental deterioration of the goods is transferred to the Customer upon handover to the forwarder or carrier, but at the latest when the goods leave our factory or warehouse. Unloading - even in the case of carriage paid delivery - is the responsibility of the Customer, who must ensure proper acceptance within normal business hours on the announced delivery day. Otherwise unloading, stacking, storage or return transport will be carried out at our discretion at the Customer's expense and risk.

e) The Customer bears the risk during the return transport of the delivery, if the return transport takes place after Wefatherm has withdrawn from the contract due to a breach of duty by the Customer or as a gesture of goodwill by Wefatherm.

## **7. Retention of Title**

a) We retain ownership of all goods delivered and sold until all claims against the Customer arising from the business relationship (including collection costs and interest) have been settled. This also applies to future claims and also if individual claims have been included by us in current invoices and the balance has been drawn and acknowledged.

b) If the Customer acts in breach of contract, in particular in case of default of payment or other endangerment of our payment claim due to lack of ability to pay on the part of the Customer, we are entitled to withdraw from the contract and take back the goods subject to retention of title; the Customer is then obliged to surrender the goods. After taking back the goods, we are

entitled to utilise them. The proceeds of the sale shall be credited against the Customer's liabilities, deducting reasonable costs of sale.

c) The Customer is revocably entitled to resell the goods in the ordinary course of business. It is hereby agreed with the Customer that all his claims against the buyer arising from the sale or transfer, in particular the claim for payment of the purchase price, are hereby assigned to us. We accept the assignment herewith. The buyer is revocably authorised to collect this claim for us. We undertake not to collect the claim as long as the buyer meets his payment obligations to us and is not in default of payment. However, if this is the case, we may revoke the resale and/or collection authorisation and demand that the buyer discloses the claims assigned to us and their debtors. We can moreover demand that the buyer provides all information necessary for collection, hands over the relevant documents and informs the third-party debtors of the assignment so that a direct payment can be made to us.

d) The goods may not be pledged or transferred for security without our written consent until full payment has been made. Processed goods are regarded as subject to the retention of title. If the goods are inseparably combined or mixed with other objects not owned by us, we shall be considered the manufacturers and therefore acquire co-ownership of the new item. The portion of our co-ownership shall depend on the proportion between the invoice value of the delivered goods and the other combined or mixed objects at the time of combination or mixing. The entitlement of the buyer to process or sell the goods subject to retention of title ends with the buyer's cessation of payments or if insolvency proceedings have been filed against the buyer's assets. In this case, the buyer is obliged to return the unprocessed goods upon first request. The demand for the surrender of the goods does not constitute withdrawal from the purchase contract.

e) Upon request, we will declare the release of rights or claims transferred to us, provided that the liabilities have been fulfilled or their value exceeds the amount of the secured claims by more than 50%.

f) If the Customer is entitled to claims against insurers or other third parties due to damage, reduction, loss or destruction of goods subject to the retention of title or for other reasons, he hereby assigns these claims with all ancillary rights to us in advance. We hereby accept the assignment in advance.

g) If the retention of title or its specific forms specified here are not effective according to the law where goods subject to retention of title are located, a corresponding security in this area is deemed to be agreed on, including any necessary obligation of the buyer to cooperate.

## **8. Warranty, Claims for Defects**

a) The warranty period is 12 months from the transfer of risk. This does not apply to claims of the Customer covered by section 10 of these T&C.

b) If the goods delivered are defective, we may choose to subsequently repair them or deliver non-defective goods (supplementary performance) to correct the defect. The Customer is not entitled to demand replacement. If either the repair fails, is seriously and ultimately refused or is intolerable for us, the buyer is entitled to withdraw from the contract or request a reduction of the purchase price at his discretion. If there is only an insignificant defect, the buyer is only entitled to request a reduction of the purchase price.

c) Warranty claims for defects shall not exist in the event of only insignificant deviation from the agreed condition, only insignificant reduction in usability, natural wear and tear or damage that occurs after the transfer of risk as a result of incorrect or negligent use, improper use,

improper treatment, incorrect installation or due to special external influences that are not specified in the contract. Technically unavoidable deviations in quality, colour, dimensions and weight are not defects in the sense of the warranty.

d) An agreement on condition is only to be assumed if it is expressly agreed as such. The mere presentation of the offer is to be regarded as a mere description of the service and in no case as a guarantee for the condition of the sales items. Guarantee declarations of third parties, e.g. manufacturer's guarantees, remain unaffected by this.

e) We shall not bear any transport, travel, labour and material costs for the purpose of supplementary performance, if these are increased because the goods have been taken to a place other than the buyer's premises after delivery, unless the transfer corresponds to their intended use.

f) In case of an unjustified request for supplementary performance, the Customer is obliged to compensate Wefatherm for the damage caused by the unjustified request, if the Customer was aware or negligently not aware that his request is unjustified.

g) If defective goods are further used, our warranty is limited only to the original defect.

h) The Customer must give us the necessary time and opportunity to examine and process the warranty.

## **9. Notification of Defects**

a) Immediately upon receipt of the goods, the buyer must examine whether they have the contractually agreed condition (in particular the number, identity and physical condition of the delivered goods) and whether they are suitable for the intended purpose. Should the delivered goods have obvious defects, this must be reported immediately upon receipt of the goods in written form, stating the order date and the invoice and article number. In any case, the notice of defects shall be deemed to be delayed if it is not received within 5 working days of receipt of the goods, including the date of receipt. If the notification is not made or not made in time, the warranty claims are excluded.

b) In case the notified defects are transport damage, the notification of defects must be made with the involvement of the forwarding agent, the supplier or the respective carrier. The buyer must then obtain a written confirmation of the damage of packaging from the transport company.

c) Hidden defects must be reported in writing immediately, at the latest within 5 working days of discovery. If the delivery has been resold by the Consumer, he must immediately report defects in writing after he received objections relevant to the defect from his buyer or third parties within the supply chain. Otherwise, the delivery is deemed to have been approved in full knowledge of the defect.

d) Only the buyer is entitled to warranty claims and these are not transferable.

## **10. Liability**

a) All claims for compensation by the buyer against us are excluded, regardless of the legal basis, unless we or our vicarious agents have acted with intent or gross negligence or if we have breached essential contractual obligations at least through slight negligence. Essential contractual obligations are those obligations that protect essential contractual legal positions

of the contractual partner, which the contract must specifically grant him according to its content and purpose. Furthermore, essential contractual obligations are those contractual obligations whose fulfilment makes the proper execution of the contract possible in the first place and on whose compliance the contractual partner has relied and had the right to rely on. In the event of gross negligence or breach of an essential contractual obligation due to slight negligence, compensation for damages shall be limited to typical and foreseeable damage.

Liability for the following cases remains unaffected: for fraudulent conduct, for guarantees given, for claims in accordance with the Product Liability Act, as well as damages resulting from injury to life, body or health.

b) In such cases where liability is excluded or limited, this also applies to the liability of Wefatherm's employees, workers, staff, representatives and vicarious agents.

c) Information provided by Wefatherm regarding the processing and use of the products, technical advice and all other data are correct to the best of our knowledge. Wefatherm does not accept any liability (except for clause 10 a) and b)) for such data issued. References to standards are only used to describe the products.

d) Only the Customer is entitled to liability claims and these are not assignable.

## **11. Industrial Property**

a) Wefatherm expressly reserves all rights held by us concerning industrial and intellectual property of the products and/or documentation supplied by Wefatherm.

b) The buyer is not permitted to change delivered products partially or completely or to apply another brand name to these products unless there is an explicit written permission.

## **12. Set-off, Retention, Assignment**

a) The buyer is only entitled to set-off with counterclaims that are undisputed by us or have been established as legally binding.

b) The buyer only has a right of retention if this is based on the same concrete contractual relationship. In addition, a right of retention only exists if the underlying claim is undisputed by us or has been legally established.

c) Customers may not assign claims against us to third parties unless we have given our written consent prior to such assignment.

## **13. Final Remarks**

a) Should individual provisions of these T&C be or become invalid in whole or in part, the validity of the remaining provisions shall not be affected.

b) Legally relevant declarations, such as setting deadlines or withdrawal, must be submitted in writing. This also applies to the repeal of this written form requirement.

c) The Customer shall be informed of any amendments to these T&C in writing or by e-mail and they shall be deemed to have been approved if the Customer does not object to the amended terms in writing or by e-mail within six weeks of notification. The Customer shall be

informed of this separately when the changes are announced. In the event that an objection is raised in time, the originally included terms shall continue to be binding.

d) All offers by Wefatherm and/or agreements with Wefatherm, as well as the obligations resulting from these offers and/or agreements are exclusively subject to the law of the Federal Republic of Germany. Excluded from this provision are individually negotiated agreements as well as clause 14 of these T&C.

e) If the Customer is a businessman/merchant as defined by the German Commercial Code, an entrepreneur/business as defined by § 14 of the German Civil Code, a legal entity under public law or a special fund under public law, Wefatherm's registered office shall be the exclusive place of jurisdiction for all disputes arising from the preparation and execution of contracts.

We are however also entitled to sue the Customer at his place of business. The place of fulfilment is our place of business, also regarding the buyer's payment obligation.

#### **14. International Purchase of Goods**

a) If the Customer's place of business is not located in Germany, the UN Convention on Contracts for the International Sale of Goods (CISG) shall apply, taking into account the following amendments and supplements:

b) We deliver ex works (INCOTERMS 2010). The place of delivery is our production facility of the respective goods. The transfer of risk to the buyer shall take place upon notification to the buyer that the goods are ready for collection, but no later than upon handover of the goods to the first carrier (Articles 66 to 69 CISG).

c) The Customer's duties of inspection and notification of defects linked to the assertion of defects shall be determined in accordance with the provisions of Articles 38 to 40 CISG; the notification of defects in accordance with Article 38 para. 1 CISG shall be made within two weeks at the latest.

d) Our obligation to ensure that the delivered goods are free from rights or claims of third parties relating to industrial or other intellectual property (Article 42 CISG) is limited to the territory of Germany. It is the sole responsibility of the Customer to check whether respective property rights or claims of third parties could be impaired according to the law of the country in which the Customer has his place of business or in which the goods are resold. The same shall apply accordingly to other rights and claims of third parties under Article 41 CISG and to compliance with public law regulations.

e) The Customer may only withdraw from the contract if the non-fulfilment of one of our obligations constitutes a fundamental breach of contract, or if we do not deliver even after a reasonable grace period has been granted by the Customer, or if we have bindingly declared that we will not deliver even after a reasonable grace period has been granted (cf. Article 49 para. 1 CISG).

f) We may choose whether we correct defects by repair or replacement delivery in the context of supplementary performance. The Customer is only entitled to withdraw from the contract or to reduce the purchase price if the repair or replacement delivery fails.