

General terms and conditions of sale and delivery of Wilhelm Grillo Handelsgesellschaft mbH

1. Scope

1. These general terms and conditions of sale and delivery (hereinafter also referred to as “GTCS”) apply to all our business relationships with our customers who are traders (Sec. 14 of the German Civil Code (*Bürgerliches Gesetzbuch* – BGB)), legal persons under public law or special funds under public law (hereinafter also referred to as “Buyer”).
2. Our services and deliveries are provided exclusively on the basis of the sales contract concluded with the Buyer, including these GTCS. The GTCS shall also apply as a framework agreement for similar future contracts with the respective Buyer, without us having to refer to them again in each individual case.
3. Our GTCS apply exclusively; we do not recognise any terms and conditions of the Buyer that conflict with or deviate from our GTCS unless we have expressly agreed to their validity. Our GTCS shall also apply if we carry out the delivery to the Buyer without reservation in the knowledge of conflicting or deviating terms and conditions of the Buyer.
4. Individual agreements take precedence over the GTCS.

2. Offer and conclusion of contract

1. Our offers are subject to change and non-binding.
2. The legal relationship between us and the Buyer shall be governed solely by the sales contract concluded, including these GTCS. This fully reflects all agreements between the contracting parties on the subject matter of the contract.

3. Prices

1. Our prices are ex works (works (factory), warehouse or smelter, as specified in our offer or order confirmation) plus freight, packaging, insurance, the applicable value added tax, customs duties, fees and other public charges.
2. In the case of deliveries to other EU member states, the Buyer must provide its VAT identification number for purchase taxation in the EU prior to delivery. Otherwise, the statutory VAT amount owed by WGH shall also be due for the deliveries.

For every tax-exempt intra-community delivery to another EU member state, the Buyer is obliged in accordance with Secs. 17b and 17c of the VAT Implementation Regulation (*Umsatzsteuerdurchführungsverordnung* – UStDV) to provide us with proof of the actual arrival of the goods (confirmation of arrival). Proof is provided on a form supplied by us. Without this proof, the VAT rate applicable to deliveries within the Federal Republic of Germany shall become due

in relation to the previous (net) invoice amount and shall be payable without deduction immediately after assertion.

4. Terms of payment

1. The invoice amount is due immediately without deduction.
2. If the Buyer does not pay within 14 days of receipt of the invoice, the Buyer is in default. The timeliness of the payment depends on the date of receipt of payment or the credit entry on our account. During the period of default, interest shall be charged on the invoice amount at the applicable statutory default interest rate. We reserve the right to assert further claims for damages caused by default.
3. Offsetting against counterclaims of the Buyer or the retention of payments due to such claims is permissible only if the counterclaims are undisputed or have been conclusively determined or arise from the same order under which the delivery in question was made.
4. If the Buyer is obliged to make similar payments to us under more than one debt relationship and if the amount paid by the Buyer is not sufficient to repay all debts, the older debt shall be repaid first, in deviation from Sec. 366 BGB, and each debt shall be repaid proportionately if they are of equal age.

5. Delivery

1. Our deliveries are made in accordance with the provisions of the Incoterms® 2020 EXW (works (factory), warehouse or smelter, as specified in our offer or order confirmation) issued by the International Chamber of Commerce in Paris (ICC). The place of fulfilment for the delivery and any subsequent fulfilment corresponds to the location contained in sentence 1 above. The Buyer is obliged to collect the goods immediately after notification of readiness for dispatch.
2. Our delivery obligations are subject to correct and timely self-delivery, unless we are responsible for the incorrect or delayed self-delivery. If we are unable to meet binding delivery deadlines for this reason, we will inform the Buyer of this and the expected new delivery deadline immediately. If the goods remain unavailable until the new delivery deadline, we are entitled to withdraw from the contract in whole or in part; we will immediately reimburse any consideration already paid by the Buyer.
3. The occurrence of our default in delivery shall be determined in accordance with the statutory provisions. In any event, however, a reminder from the Buyer is required. If we are in default of delivery, the Buyer may not demand

lump-sum compensation for the damage caused by the delay or a contractual penalty.

4. The risk of accidental loss and accidental deterioration of the goods shall pass to the Buyer at the latest upon handover. In the case of sale by dispatch, however, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall pass to the Buyer upon delivery of the goods to the forwarding agent, carrier or other person designated to carry out the dispatch. If the Buyer is in default of acceptance, this shall be deemed equivalent to handover.
5. If delivery in instalments has not been agreed, we are entitled to deliver in instalments only if
 - the delivery in instalments can be used by the Buyer within the scope of the contractual purpose,
 - the delivery of the remaining ordered goods is ensured and
 - the Buyer does not incur any significant additional expenditure or additional costs as a result (unless we agree to bear these costs separately).
6. The weight determined by us is decisive for the calculation of the weight. Unless we have determined the weight separately, the weight stated by the manufacturer shall be decisive.
7. In all other respects, the Buyer's rights pursuant to para. 6 of these GTCS below and our statutory rights, in particular in the event of an exclusion of the obligation to perform, for example due to impossibility or unreasonableness of performance and/or subsequent fulfilment, shall remain unaffected.

6. Warranties

1. The statutory provisions shall apply to the Buyer's rights in the event of material defects and defects of title in accordance with the provisions below.
2. The Buyer is entitled to warranty claims and rights only if the Buyer has fulfilled its obligations to inspect the goods and give notice of defects in accordance with Sec. 377 of the German Commercial Code (*Handelsgesetzbuch* – HGB)). The Buyer must inspect the goods immediately after delivery. Obvious defects or defects that would have been recognisable during an immediate, careful inspection (together referred to as 'obvious defects') must be reported by the Buyer in text form immediately, but no later than 14 calendar days after delivery. In the case of goods that have to be analysed, the period for reporting defects is extended to 20 calendar days. Hidden defects must be reported immediately upon discovery. A factual handling of a report of defects on our part shall not constitute a waiver of compliance with this provision.
3. We must be given the opportunity to inspect the reported defect on site. The inspection by us must be carried out

immediately if the Buyer demonstrates an interest in immediate fulfilment. The goods must be kept undamaged, unused and covered until the inspection has been completed. The warranty shall lapse if the Buyer modifies the goods or has them modified by third parties without our consent and this makes it impossible or unreasonably difficult to remedy the defect. In any event, the Buyer shall bear the additional costs of remedying the defect resulting from the modification.

4. In the event of justified and timely reporting of defects, we are entitled and obliged, at our discretion, to provide subsequent fulfilment in the form of rectification of the defect or a replacement delivery concurrently with the return of the rejected goods. For this purpose, the Buyer shall grant us the opportunity for subsequent fulfilment within a reasonable period of time. If the subsequent fulfilment fails, the Buyer may withdraw from the contract or reduce the purchase price. If a defect is due to a fault on our part, the Buyer may demand compensation for damages under the conditions specified in para. 7 of the GTCS. Further or other claims of the Buyer against us or our legal representatives or vicarious agents due to a defect are excluded.
5. The Buyer's claims due to defects in the goods, in particular all contractual and non-contractual claims for damages of the Buyer based on a defect in the goods, shall become time-barred one year after delivery of the goods. This does not apply
 - if the goods are a building or an item that has been used for a building in accordance with its normal use and has caused its defectiveness,
 - to claims for damages under the German Product Liability Act (*Produkthaftungsgesetz* – ProdHaftG),
 - to claims for damages arising from injury to life, limb or health,
 - in the event of an intentional or grossly negligent breach of duty by us, our legal representatives or one of our vicarious agents, or
 - in the event of fraudulent concealment of defects.

The statutory provisions on suspension of expiry, suspension and recommencement of the limitation periods remain unaffected.

6. If the last contract in the supply chain is a purchase of consumer goods and Sec. 478 BGB applies, the statutory warranty claims and rights of the Buyer remain unaffected with the exception of any claims for damages against us.

7. General limitations of liability

1. We are liable for all damages caused for which we are culpable, including those of our legal representatives or vicarious agents, only in cases of intent and gross negligence.
2. In the event of

- damages arising from injury to life, limb or health,
- damages covered by the ProdHaftG,
- damages arising from the breach of a cardinal obligation (cardinal obligations are obligations whose fulfilment is essential for the proper execution of the contract and on whose compliance the Buyer may generally rely), or
- breach of quality agreements and fraudulent concealment of defects

we shall be liable also for slight negligence and thus for any fault, even on the part of our legal representatives or vicarious agents.

3. In the event of a breach of cardinal obligations (cardinal obligations are obligations whose fulfilment is essential for the proper execution of the contract and on whose compliance the Buyer may generally rely), liability shall be limited to the foreseeable damage typical for the contract, unless another of the cases of extended liability listed above exists at the same time.
4. The provisions apply to all claims for damages, irrespective of the legal grounds, in particular due to defects, breach of duties arising from the contractual obligation or from unauthorised action. They also apply to the claim for reimbursement of futile expenses.
5. A change in the burden of proof to the detriment of the Buyer is not associated with the above provisions.
6. Claims for damages and reimbursement of expenses by the Buyer that are not based on a defect shall in principle expire within one year. The limitation period begins at the end of the year in which
 - the claim has arisen and
 - the Buyer becomes aware of the circumstances giving rise to the claim and the identity of the debtor or should have become aware of them without gross negligence.

This does not apply

- to claims that are not time-barred,
- to claims for damages under the ProdHaftG,
- to claims for damages arising from injury to life, limb or health, or
- in the event of an intentional or grossly negligent breach of duty by us, our legal representatives or one of our vicarious agents.

The statutory provisions on suspension of expiry, suspension and recommencement of the limitation periods and maximum limitation periods remain unaffected.

7. The above exclusions and limitations of liability shall apply to the same extent in favour of our legal representatives and vicarious agents.

8. Retention of title

1. The retention of title agreed below serves to secure all our current and future against the Buyer arising from this

supply relationship (including balance claims from a current account relationship limited to this supply relationship).

2. The goods delivered by us to the Buyer shall remain our property until all secured claims have been paid in full. The goods and the goods covered by the retention of title which take their place in accordance with the following provisions are hereinafter referred to as “goods subject to retention of title”.
3. The Buyer is entitled to process and sell the goods subject to retention of title in the ordinary course of business until the realisation event occurs (para. 8.8. of the GTCS). Pledges and transfers of ownership by way of security are not permitted.
4. If the goods subject to retention of title are processed by the Buyer, it is agreed that the processing is carried out in our name and for our account as manufacturer and that we directly acquire ownership or – if the processing is carried out using materials from multiple owners or the value of the processed item is considerably higher than the value of the goods subject to retention of title – co-ownership (fractional ownership) of the newly created item in the ratio of the value of the goods subject to retention of title to the value of the newly created item. In the event that no such acquisition of ownership should occur for us, the Buyer hereby transfers its future ownership or – in the above-mentioned ratio – co-ownership of the newly created item to us as security. If the goods subject to retention of title are combined or inseparably mixed with other items to form a uniform item and if one of the items is to be regarded as the main item, meaning that we or the Buyer acquires sole ownership, the party to whom the main item belongs shall transfer co-ownership of the uniform item to the other party on a pro rata basis in the ratio specified in sentence 1. The Buyer’s expectant right to the goods shall continue in the remodelled item.
5. In the event of resale of the goods subject to retention, the Buyer hereby assigns to us by way of security the resulting claim against the acquirer – in the event of co-ownership on our part of the goods subject to retention in proportion to the co-ownership share. The same applies to other claims which replace the goods subject to retention of title or otherwise arise regarding the goods subject to retention of title, such as insurance claims or claims from tortious acts in the case of loss or destruction. We revocably authorise the Buyer to collect the claims assigned to us in its own name. We may revoke this direct debit authorisation only in the event of realisation (para. 8.8. of the GTCS).
6. If third parties seize the goods subject to retention of title, in particular by pledges, the Buyer shall immediately inform them of our ownership and inform us of this in order to enable us to enforce our ownership rights. If the third

party is not in a position to reimburse us for the court costs or out-of-court costs incurred in this connection, the Buyer shall be liable to us.

7. We shall release the goods subject to retention of title and the items or claims taking their place if their value exceeds the amount of the secured claims by more than 10%. It shall be assumed that the requirements of the preceding sentence are met if the estimated value of the collateral to which we are entitled reaches or exceeds 150% of the value of the secured claims. We shall be responsible for selecting the items and receivables to be released thereafter.
8. If we withdraw from the contract in the event of conduct by the Buyer in breach of contract – in particular default of payment – we are entitled to demand the return of the goods subject to retention of title.
9. If a retention of title has not been effectively agreed in accordance with the above provisions, irrespective of the legal grounds (e.g. in the case of transactions with a foreign connection), the Buyer shall be obliged to secure our rights in a correspondingly legally effective manner and to co-operate in the measures required for this purpose. In any case, the goods delivered by us to the Buyer remain under our ownership until the purchase price has been paid in full.

9. Force majeure

1. In cases of force majeure, the affected contractual party shall be released from the obligation to deliver or accept for the duration and to the extent of the impact.
2. Cases of force majeure include in particular, but are not limited to
 - war (whether declared or not), hostilities, invasion, acts of foreign enemies, extensive military mobilisation,
 - civil war, riot, rebellion and revolution, military or usurped power, insurrection, terrorist acts, terrorism, sabotage or piracy,
 - foreign exchange and trade restrictions, embargoes, sanctions,
 - acts of government, whether lawful or unlawful, compliance with laws or official orders, expropriation, confiscation of works, requisition, nationalisation,
 - plague, epidemic, pandemic (such as due to Covid-19), natural disaster or extreme natural event,
 - explosion, fire, destruction of equipment, prolonged failure of transport, telecommunications, information systems or energy,
 - general labour unrest such as boycotts, strikes and lock-outs, slowdowns, occupation of factories and buildings, insofar as the respective circumstance is not the responsibility of the contracting party invoking it and no corresponding procurement risk or guarantee has been assumed.

3. The affected contracting party shall notify the other contracting party immediately of the occurrence and cessation of the force majeure and shall use its best endeavours to remedy the force majeure and to limit its effects as far as possible.
4. In the event of force majeure, the contracting parties shall agree on the further procedure and determine whether the goods not delivered during this period are to be delivered subsequently after its cessation. Notwithstanding the foregoing, either party is entitled to rescind the contract in whole or in part to the extent of the goods affected by the delay if the force majeure lasts for more than 120 days from the agreed delivery date.
5. In all other respects, the statutory rights of the contracting parties in accordance with these GTCS shall remain unaffected.

10. Place of jurisdiction and choice of law

1. The exclusive place of jurisdiction for disputes arising from or in connection with this business relationship between the Buyer and us is our registered office. However, we are also entitled to sue the Buyer at its (registered) office. Mandatory statutory provisions on exclusive places of jurisdiction remain unaffected by this provision.
2. The contract, the GTCS and the contractual legal relationships arising from this business relationship between us and the Buyer shall be governed by the laws of the Federal Republic of Germany, excluding the conflict of laws provisions and the UN Convention on Contracts for the International Sale of Goods (CISG).