

Standard Terms of Sale (STS) of Wellhöfer Treppen GmbH & Co. KG

Version: November 2014

§ 1 General, Scope of Application

- (1) The present Standard Terms of Sale (STS) apply for all our business relationships with our customers (hereinafter "Purchaser") as far as they are entrepreneurs (§ 14 German Civil Code (GCC)), legal persons under public law or special public law funds.
- (2) Our STS have exclusive application. Derogating, conflicting or supplementary standard business terms of the Purchaser shall only become a part of the contract if and to the extent that we have expressly consented to their application.
- (3) Individual agreements with the Purchaser shall in any case have priority over these STS. A written agreement or our written confirmation, as the case may be, is determinative for the content of such agreements.
- (4) Declarations and notices having legal effect which are to be provided to us after conclusion of the contract by the Purchaser (e.g. setting of time limits, declaration of rescission) must be made in writing to be valid.

§ 2 Conclusion of Contract

- (1) Our offers are subject to change and non-binding.
- (2) The order of the merchandise by the Purchaser is deemed to be a binding contract offer.
- (3) Our acceptance shall be made by written declaration.

§ 3 Delivery Period and Delay in Delivery

- (1) The delivery period shall be individually stipulated or indicated by us upon acceptance of the order, as the case may be, unless an express commitment or agreement for or a fixed delivery period was made.
- (2) As far as we cannot meet binding delivery dates for reasons for which we are not responsible (unavailability of the performance item), we will inform the Purchaser thereof without delay and at the same time indicate the probable new delivery period. If the performance item is also not available within the new delivery period, we are entitled to rescind the contract in whole or in part. We will reimburse any counter-performance which the Purchaser already provided without delay. A case of unavailability of the performance item in this sense is in particular the non-timely delivery to us by our supplier if we have concluded a matching hedging transaction (kongruentes Deckungsgeschäft), and neither we nor our suppliers are at fault or in a particular case we have no obligation of procurement.
- (3) The statutory provisions determine when we are in delay of delivery. A warning notice by the Purchaser shall be necessary in any event. If we are in delay of delivery, the Purchaser is entitled to claim a flat indemnification amount for the damage incurred through the delay. The flat damage amount for each completed calendar week of the delay is 0.5 % of the net price (delivery value), but in total at most 5 % of the delivery value of the merchandise delivered with delay. We reserve the right to prove that the Purchaser did not incur any damage or only incurred lower damages than the above flat amount.
- (4) The rights of the Purchaser pursuant to § 8 of these STS and our statutory rights, in particular in the event of an exclusion of the duty of performance, remain unaffected.

§ 4 Shipping of the Merchandise to the Main Office of the Final Customer; "EXW Incoterms (2010)"; other modes of delivery; delay of acceptance, acts of cooperation etc.; acceptance

- (1) We shall ship the merchandise to the place of residence/business of the final customer to be indicated by the Purchaser (i.e. the contractual partner of the Purchaser who acquires our merchandise primarily for the purpose of the ordinary use) as far as he is located in Germany and nothing is stipulated to the contrary. This will be done – including in relation to the packaging – at our expense. We are entitled to determine the type of the shipment and the packaging in our reasonable discretion. The risk passes with the provision of the merchandise to the shipping agent, freight carrier or other transport agent. This also applies if partial deliveries are made or if we have also assumed other services (e.g. the shipping, transport or assembly). In other respects the provisions on the place of performance (§ 10 of these STS) remain unaffected.
- (2) As far as the place of residence/business of the final customer is located abroad or the shipping of the merchandise to the place of residence/business of the final customer is contractually excluded, the "EXW Incoterms (2010)" (related to the warehouse from which we respectively make the delivery) apply to our deliveries, as far as nothing is stipulated to the contrary.
- (3) Damages in transit must be notified in writing to the shipping company upon receipt of the merchandise. In the case of hidden defects the notice must be provided within 7 days after delivery.
- (4) If the Purchaser is in delay of acceptance, if he refrains from undertaking a required act of cooperation or if our performance is delayed for other reasons for which the Purchaser is responsible, we are entitled to invoice the indemnification of the damage arising therefrom including our additional expenses (e.g. costs of delivery logistics).

§ 5 Prices and Payment Terms

- (1) As far as nothing is stipulated to the contrary in a particular case, our prices which are current at the date of the conclusion of the contract are applicable ex warehouse plus statutory VAT.
- (2) The purchase price is due and payable within 14 days after issuance of the invoice and delivery or acceptance of the goods, as the case may be.
- (3) Upon the expiry of the above payment period, the Purchaser is in delay. The purchase price shall bear interest during the period of delay at the respectively applicable statutory late payment interest rate. We reserve the right to assert additional damages arising due to the delay. In relation to business merchants our claim to the interest on due payments in commercial transactions (§ 353 German Commercial Code (GCC)) remains unaffected.
- (4) The Purchaser has rights of set-off or retention only as far as his claim has been finally adjudicated or is undisputed. In the event of defects in the delivery, the counter-rights of the Purchaser, in particular pursuant to § 7 para. 6 sentence 2 of these STS, remain unaffected.

§ 6 Reservation of Title

- (1) We reserve title to the sold merchandise until the full payment of all our current and future claims arising from the purchase agreement and an ongoing business relationship (secured claims).
- (2) The merchandise covered by the reservation of title may not be pledged or transferred by way of security to third parties prior to complete payment of the secured claims. The Purchaser shall inform us in writing without delay if and to the extent the merchandise belonging to us is seized by third parties.
- (3) In the case of conduct of the Purchaser in breach of contract, in particular non-payment of the due purchase price, we are entitled to rescind the agreement in accordance with the statutory provisions and to request return of the merchandise on the basis of the reservation of title and the rescission. If the Purchaser does not pay the due purchase price, we may only assert these rights if we have previously set to the Purchaser a reasonable period for payment or the setting of a time limit is not necessary according to the statutory provisions.
- (4) The Purchaser is authorized to sell and/or process the merchandise covered by a reservation of title in the ordinary course of business. In this case, the following provisions have supplementary application.
 - (a) The reservation of title also extends to the products created through processing, mixing or combination at their full value. In this connection we shall be deemed to be manufacturer. If in the case of a processing, mixing or combination with products of third parties their right of ownership continues to apply, we acquire joint ownership in the proportion of the invoice values of the processed, mixed or combined merchandise. In other respects the same applies for the created product as for the merchandise covered by the reservation of title.
 - (b) The claims against third parties arising from the resale of the merchandise or the product is hereby assigned to us by the Purchaser in accordance with the above paragraph by way of security in full or in the amount of any joint ownership share we may have, as the case may be. We accept the assignment. The duties of the Purchaser mentioned in para. 2 also apply in relation to the assigned claims.

(c) In addition to ourselves, the Purchaser remains entitled to collect the claims. We agree not to collect the claim as long as the Purchaser complies with his payment obligations towards us, is not in delay of payment, no application for commencement of an insolvency proceeding has been made and there is no other impairment of his payment capability. If this, however, is the case, we can request that the Purchaser disclose to us the assigned claims and the debtors thereof, provide all information necessary for collection, deliver the associated documents and inform the debtors (third parties) of the assignment.

(d) If the realizable value of the security exceeds our claims by more than 10 %, we shall at the request of the Purchaser release security of our choice.

§ 7 Warranty Claims of the Purchaser

- (1) As far as nothing is provided to the contrary below, the statutory provisions apply for the rights of the Purchaser in the case of physical defects and defects in title (including incorrect delivery or delivery in insufficient quantity as well as improper assembly or deficient assembly instructions). In all other cases the statutory special provisions for final delivery of the merchandise to a consumer (indemnification claim against supplier pursuant to §§ 478, 479 GCC) remain unaffected.
- (2) The basis for our liability for defects is in particular the agreement on the quality of the merchandise. The product descriptions (including those of the manufacturer) which were provided to the Purchaser prior to his order or which were incorporated in the agreement in the same way as these standard business terms shall be deemed to be an agreement on the quality of the merchandise.
- (3) As far as the quality was not agreed, whether a defect exists or not is to be assessed according to the statutory provisions (§ 434 para. 1 sentence 2 and 3 GCC). We however do not assume any liability for public statements of third parties (e.g. advertising statements).
- (4) The warranty claims of the Purchaser require that he complied with his statutory obligations of inspection and objection (§§ 377, 381 GCC). If during the inspection or later a defect is found, we shall be informed thereof in writing without delay. The notice shall be deemed to be without delay if it is made within two weeks. The timely sending of the notice is sufficient to comply with the time limit. Regardless of this duty of inspection and objection, the Purchaser shall indicate in writing apparent defects (including incorrect delivery and delivery in insufficient quantity) within two weeks after delivery. Here also the timely sending of the notice shall be sufficient to comply with the time limit.
- (5) If the delivered item is defective, we are entitled to initially choose whether we provide replacement performance by eliminating the defect (improvement) or through delivery of a defect-free item (replacement delivery). Our right to refuse replacement performance if the statutory conditions are met remains unaffected.
- (6) We are entitled to make the required replacement performance dependent on the Purchaser paying the due purchase price. The Purchaser is however entitled to retain a part of the purchase price which is reasonable in relation to the defect.
- (7) The Purchaser must provide to us the time and opportunity necessary for the required replacement performance, in particular provide to us the merchandise objected to for inspection purposes. In the event of a replacement delivery, the Purchaser shall return to us the defective item in accordance with the statutory provisions. The replacement performance includes neither the deinstallation of the defective item nor its renewed installation if the installation was not originally required of us.
- (8) The expenses, in particular transport, road, work and material costs (not: deinstallation and installation costs) shall be borne by us if a defect actually exists. If however a request for a defect removal of the Purchaser turns out to be unjustified, we can request from the Purchaser reimbursement of the costs arising therefrom.
- (9) In urgent cases the Purchaser has the right to himself remove the defect and to request from us reimbursement of the expenses which are objectively necessary for this purpose. We shall be informed of such an own remedial measure without delay, and if possible in advance. There is no right to undertake an own remedial measure if we were entitled to refuse such replacement performance according to the statutory provisions.
- (10) If the replacement performance was unsuccessful or a reasonable time limit to be set for the replacement performance by the Purchaser expires unsuccessfully or is not necessary under the statutory provisions, the Purchaser may rescind the purchase agreement or reduce the purchase price. There is however no right of rescission in the event of an insignificant defect.
- (11) Claims of the Purchaser for damages or reimbursement of expenses incurred in vain exist only in accordance with § 8 and in other respects are excluded.

§ 8 Other Liability

- (1) As far as these STS including the following provisions do not stipulate otherwise, in the event of a breach of contractual and non-contractual obligations we are liable under the applicable statutory provisions.
- (2) We are liable for damages in the case of intentional acts or gross negligence, regardless of the legal reason. In the case of simple negligence, we are only liable
 - a) for damages arising from injury to life, limb or health
 - b) for damages arising from the breach of a material contractual obligation (obligation the fulfillment of which first makes possible the proper performance of the contract and on the compliance with which the contractual partner as a rule relies and is entitled to rely). In this case our liability is however limited to the indemnification of the typically arising foreseeable damage.
- (3) The limitations of liability arising from para. 2 do not apply as far as we have fraudulently concealed a defect or have provided a guarantee for the quality of the merchandise. The same applies for the claims of the Purchaser under the Product Liability Act.
- (4) The Purchaser may only rescind or terminate the contract due to a breach of duty not consisting in a defect if we are responsible for the breach of duty. An unrestricted right of termination of the Purchaser (in particular pursuant to §§ 651, 649 GCC) is excluded. In other respects the statutory provisions and legal consequences apply.

§ 9 Limitation Period

- (1) In derogation from § 438 para. 1 Nr 3 GCC, the general limitation period for claims due to physical defects and defects in title is one year after delivery. As far as an acceptance is stipulated, the limitation period begins with the acceptance.
- (2) If the merchandise however is a building structure or an item which in accordance with its usual method of use was used for a building structure and caused its defectiveness (building material), the limitation period is, in accordance with the statutory rule, five years starting from delivery (§ 438 para. 1 Nr. 2 GCC). Special statutory provisions for in rem rights of third parties for surrender of possession (§ 438 para. 1 Nr. 1 GCC), in the event of fraud of the Seller (§ 438 para. 3 GCC) and for claims of indemnification against the supplier in the case of final delivery to a consumer (§ 479 GCC) shall also remain unaffected.
- (3) The above limitation periods under the law of the sale of goods also apply for the contractual and non-contractual damage claims of the Purchaser based on a defect of the merchandise, unless the application of the general statutory limitation period (§§ 195, 199 GCC) would in a particular case lead to a shorter limitation period. The limitation periods of the Product Liability Act in any event remain unaffected. Otherwise solely the statutory limitation periods apply for the damage claims of the Purchaser set forth in § 8.

§ 10 Place of Performance

The place of performance for our deliveries is the warehouse from which we deliver.

§ 11 Choice of Law and Place of Jurisdiction

- (1) These STS and all legal relationships between us and the Purchaser are governed by the law of the Federal Republic of Germany, excluding international uniform law, in particular the UN sale of goods law. Requirements and effects of the reservation of title pursuant to § 6 are governed by the law of the place where the item is respectively located, as far as pursuant thereto the choice of German law is impermissible or invalid.
- (2) If the Purchaser is a business merchant within the meaning of the German Commercial Code, a legal person under public law or a special public law fund, the exclusive – including international – place of jurisdiction for all disputes arising directly or indirectly from the contract relationship is the place of our main office in Würzburg. We are however also entitled to raise a claim at the general place of jurisdiction of the Purchaser.