

# General Terms and Conditions , Wirecon GmbH, Bad Bentheim (Germany)

## General Terms and Conditions of Sale (AGB)

### I. General - Scope

1. These General Terms and Conditions shall be applicable to any present and future business relationship between the Company and the Client.
2. No General Terms and Conditions varying from, in conflict with or supplementary to these Terms and Conditions shall be part of the Contract even when known, unless explicitly agreed in writing.
3. Unless otherwise explicitly specified, text form shall always be acceptable in addition to the written form.

### II. Contracts

1. The Company's quotations shall be subject to prior sale and technical changes – in as far as acceptable.
2. Placing of an order for goods shall be a final commitment by the Client to acquire the goods ordered. The client shall be responsible for the correct choice and quantity of the goods.
3. Should a contract have been made without any written statements (order and confirmation of order) being simultaneously available from both of the contracting parties, the Company's written confirmation of order and, if not available, the Client's order shall be decisive.
4. Should more than one client be involved in a contract, the said Clients agree to authorise each other, in order to be able to accept the Company's legally binding statements in any matters referring to the contract. Services shall be rendered by the Company to each of the Clients, effective to all other Clients.
5. The Company shall be entitled to accept the contractual offer included in an order within a period of two weeks after receipt by the Company. Acceptance shall be made by a written confirmation or supply of the goods to the Client.
6. The Company shall in all cases confirm in writing any changes or amendments to an order.
7. Contracts shall always be subject to correct and timely supplies being received by the Company from the Company's suppliers. This shall apply to cases only where non-delivery is beyond the Company's control, in particular in the case of a cover purchase congruent with that of the Company's supplier. The Client shall be informed without delay of any non-availability. Any consideration paid shall be refunded immediately.
8. Compliance with § 312e I paras. 1-3 BGB (German Civil Code) shall be excluded.
9. Should the Client order goods electronically, the wording of the contract shall be saved by the Company and sent to the Client on request by e-mail, in addition to these AGBs.
10. Should the Company be offered goods for resale to third parties by the Client, the Client agrees to protect the Company's interests by not signing a contract directly with the said third party and not offering the goods directly for sale to the said third party and/or any other prospects for the validity of the said quotation to the Company.

### III. Reservation of Title

1. The Company reserves the title in the goods until full payment of any accounts receivable from a current business relationship.
2. For as long as reservation of title persists, the Client agrees to allow the Company access of third parties to the goods, for instance in case of attachment, and notify the Company immediately any damage to or loss of the goods. The Client shall notify changes in ownership and his registered office to the Company immediately.

- Should third parties not be in a position to refund to the Company, in case of attachment, judicial or extrajudicial costs of proceedings in compliance with § 771 ZPO (German Code of Civil Practice), the Client shall be responsible for compensation of any loss suffered by the Company in this respect. However, the Client shall not be entitled to suffer attachment or assignment himself as a security for the delivered goods.
3. Should the Client infringe the Contract, in particular due to delay of payment or breach of duty in compliance with paras. 2 and 4. of this clause, the Company shall be entitled to rescind from the Contract and to demand return of the goods.
  4. The Client shall be entitled to resale and processing of the goods during normal business. The Client agrees to assign to the Company at this point in time any accounts receivable for the same claims, including any ancillary rights, up to the level his invoice plus 20%, ranking before any others, incurred against third parties by resale and/or processing.

The Company agrees to accept the said assignment herewith. After assignment, the Client shall be authorised to collect accounts receivable but shall not be entitled to reassign and/or suffer attachment and/or agree bans of assignment of/with successive purchasers or any other third parties. The Company reserves the right to collect the said accounts receivable personally, as soon as the Client is not properly honouring his duty to pay and is in delay. In case of (threatening) insolvency or filing a petition for insolvency proceedings and/or in case of insolvency, the Client agrees to notify the Company immediately of any accounts receivable assigned and their debtors and to submit to the Company any documents required for the collection of the said accounts receivable.

5. Processing and incorporation of the goods by the Client shall always be effected for and on behalf of the Company. Should the goods be incorporated into items during processing, which are not the Company's property, the Company shall become the co-owner of the new item pro rata of any goods delivered plus 20% of any other processed items, subject to the new item being stored free of charge and correctly by the Client. The above shall also apply, should the goods have been mixed with any other items not being the Company's property.

6. The Company agrees to release any securities due to the Company at the Client's request, to the extent in which the value of the said securities exceeds any accounts receivable by more than 20%. Securities shall be released according to the Company's discretion.

### IV. Prices/Payment

1. Any prices quoted shall be final, only refer to the volume stated, exclusive of packaging and transport charges, ex works (EXW in compliance with INCOTERMS 2000) plus statutory VAT as applicable.
2. Should the Company's prime costs be increased or reduced between signature of the contract and delivery, for instance for production materials, energy, fuels and supplies, transport charges and/or wages/salaries, the Company shall be entitled, without any consideration of a quotation or confirmation of order, to adjust sales prices and/or shipping costs accordingly.
3. The Company reserves the right to invoice appropriate extras charges levied according to Federal and national laws, by which prices for the Company's goods are increased. In this case, the Client shall not be entitled to rescind from the contract for this reason.
4. Invoices shall be payable in EURO strictly net after receipt of the goods and from the date of invoice within 14 calendar days. After expiry of this term, the Client shall be in delay with payments. Any other terms of payment, in particular the acceptance of bills of exchange and cheques shall be subject to written agreement.

5. The Company's representatives shall not be authorised to accept payments.
6. Whilst in delay, the Client shall be subject to interest of 8% above the base rate on any moneys owed. The Company reserves the right to provide evidence for and claim higher rates of interests due to delay.
7. Payments received shall be deducted from the oldest debt. Cheques and bills of exchange shall only be accepted subject to an appropriate agreement and only subject to being hon-

oured. The Company shall not be obliged to accept bills of exchange.

The Company shall be entitled to offset any accounts receivable by the Client against moneys outstanding to the Company's parent company, subsidiaries or any other associated companies.

8. Bills of exchange and cheques shall be credited subject to being honoured, minus any charges and expenses incurred therefore by the Company.

9. The Client's rights to offset and retain payments shall only apply subject to counterclaims having been legally confirmed or accepted by the Company.

10. Rights of retention shall only be applied when the Client's counterclaim is based on the same contractual relationship.

11. Exports shall be subject to specific terms of payment.

12. Payments to the Company's employees shall only be made subject to providing appropriate proof of authorisation for collection.

13. Should the Client's financial status be subject to major changes, in particular in the case of (threatening) insolvency, the Company shall be entitled to either rescind from the contract or to demand a security or prepayment for the full or part of the purchasing price.

Should the Client deny the provision of the said securities, the Company shall also be entitled, after expiry of an appropriate period of grace, to rescind from the contract. Should the Client be in arrears with (part) payments due to (threatening) insolvency, the Company shall be entitled to retain any further deliveries until full payment of the amount outstanding. This shall not affect the Client's duty to accept the goods.

### V. Shipment/Delivery/Transfer of Risk/Packaging

1. Delivery of the goods shall be effected by collection ex works (EXW in compliance with INCOTERMS 2000), otherwise by delivery to the destination agreed. Should the destination be changed at the Client's request, the Clients shall be responsible for payment of any additional costs. Packaging shall be non-returnable.
2. The risk of accidental loss or deterioration of the goods shall be transferred to the Client on collection ex works on handover, when shipped on delivery of the goods to the forwarder, the haulier or any other person or institution instructed with the shipment of the goods. Unless otherwise agreed, transport insurance shall be taken out by the Client only.
3. Part deliveries shall be acceptable.
4. Should the Client be in delay after having received a written reminder for making services available or co-operation, the Company shall be entitled, by setting a period of grace of 14 calendar days in writing at the Company's discretion, to rescind from the contract and to claim damages.

5. Goods notified ready for shipment shall be called off by the Client immediately, but at the latest on expiry of a period of 10 calendar days after notification. Should no call-off be made, the Company shall be entitled to store the goods at the Client's expense and risk according to the Company's discretion and to invoice the goods as having been delivered ex works. The storage fee shall amount to 1% of the invoiced total per month or part

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thereof and shall be limited to 5% of the total invoiced. The Company shall be at liberty to provide proof of higher storage costs.

6. The Company assumes that the person signing the delivery note on acceptance will be authorised to accept the goods and confirm receipt and to accept the Company's delivery list by signature of the delivery note.

7. Handover shall be equal to the Client being in delay with acceptance.

8. Should no instructions have been given, shipment shall be effected to the Company's best discretion but without assuming any liability for the lowest transport costs. The Client shall be responsible for any expenses incurred by part deliveries.

9. Unless otherwise agreed for orders on call, the Company agrees to grant a period of 3 months for full completion from the date of order. Should the period of acceptance have expired, the Company shall be entitled at its discretion to either invoice the goods or to cancel the order for that part of the contract that has not been completed.

10. Unless explicitly defined, deliveries shall never be final. Delays in delivery shall only entitle the Client to rescind from the contract after expiry of an adequate period of grace. Should a downpayment and part deliveries have been made, the downpayment may only be offset against the last part delivery.

11. Acts of God affecting the Company or one of its suppliers, e.g. any disruptions in operations whatsoever, in particular machinery breakdowns, strikes, stoppages, lockouts, faults in raw materials required for production, not due to the Company, traffic disruptions, delays in transport and any other events not caused by the Company and the Company's suppliers, being an obstacle to due and correct completion, shall entitle the Company, at the Company's option, to partly or fully terminate or suspend its delivery commitments. Irrespective of deliveries being exceeded, the Client shall still be obliged to accept deliveries.

## VI. Liability for faults

1. The Company shall be liable for faults in any goods supplied by the Company, initially at the Company's option by repairs or replacements. In case of repairs, the Company agrees to pay any expenses incurred for this purpose, in particular transport, travelling, labour and material costs, subject to not being increased by the fact that any items purchased will have to be transported to another than the location defined for completion.

2. The Client agrees to notify the Company in writing of any obvious faults within a period of 10 calendar days from receipt of the goods, otherwise any liability claims for faults shall be excluded. Notifications of faults sent in due course shall suffice to comply with this deadline. Should a notification of faults be made verbally or by telephone due to being urgent, it shall be confirmed in writing. The goods shall be left untouched, as far as possible, for inspection of any alleged faults by the Company.

3. The Client shall be fully subject to the onus of proof for any reasons for claims, in particular faults as such, for the time of detecting the fault and for any notification of the fault being made in due course.

4. Should the Client opt for rescission from the contract due to a legal or material fault, after unsuccessful retrospective completion, the Client shall not be entitled to claims for damages due to the said fault.

5. Should the Client opt for damages after unsuccessful retrospective completion, the goods shall remain with the Client, subject to this being acceptable to him. Damages shall be limited to the difference between the sales price and the faulty

item. The above shall not apply should the Company be guilty of malicious contract infringement.

6. Liability claims for damages shall be barred by the statute of limitations after a period of twelve months from delivery of the goods. The above shall not apply when the Company has not notified a fault in due course (para. 2 of this section).

7. Any liability claims due to material faults shall be excluded for the sale of second-hand goods.

8. The Company shall only be liable for faults due to stresses or use of the goods under standard operating and climatic conditions. Should the goods be destined for special conditions and should the Company not have been notified of this beforehand, or should the Client modify the goods incorrectly, any liability for material faults shall be excluded.

9. In principle, the condition of the goods shall be exclusively based on the Company's product specification or the quotation. Public statements, recommendations or advertising shall not constitute any contractual condition of the goods.

10. Should the Client receive faulty instructions for assembly/use, the Company shall only be committed for provide correct instructions for assembly, should the fault in assembly instructions prevent correct assembly.

11. The Client shall not be given any warranties guaranteed by the Company. This shall not affect any manufacturers' warranties.

## VII. Limitations of Liability

1. In case of any mildly negligent and more serious breaches of duty, the Company's liability shall be limited to any foreseeable, direct average losses suffered, typical to the contract. The above shall include any mildly negligent and more serious breaches of duty by the Company's legal representatives or agents.

2. The above limitations of liability shall not refer to any claims of the Client due to product liability. In addition, these limitations of liability shall not apply to any physical and health impairment or loss of the Client's life, attributable to the Company.

3. The Client's claims for damages due to a fault shall be barred by the statute of limitations twelve months after delivery of the goods. The above shall not apply, should the Company be accused of gross negligence or malice and any physical or health impairment caused by the Company or loss of the Client's life.

## VIII. Data Protection Statement

The Company agrees to save and process any personal data disclosed to the Company for the purpose of fulfilling each contract only and only in as far as required for guarding the Company's rightful interests and subject to there being no reason for assuming, after an in-depth weighing of interests, that any interests of the Client in excluding such processing or use, worth protecting, are outweighing. For this purpose, the Client agrees to storage, transmission and use of his data.

## IX. Final Provisions

1. The place of performance for any liabilities resulting from the above is Bad Bentheim Germany

2. Contracts shall be subject to the law of the Federal Republic of Germany. The provisions of UN Purchasing Law (CISG) shall not apply.

3. The language of the contract shall be German.

4. Should the Client be a business, a public corporation or a public special revenue fund, the parties agree to exclusively subject to the jurisdiction of the Osnabrück (Germany) courts of justice for any litigation resulting from the contract. The above shall include any existing and future claims resulting from the business relationship, unless one of the parties subject to a claim has moved its registered office or normal operations from an area subject to German law or was never subject to it, subject to these facts not having been known at the time when legal proceedings were instituted. The above shall apply to any claims being presented during proceedings referring to cheques, bills of exchange and reminders.

5. Should individual provisions of a contract signed with the Client, based on the Company's General Terms and Conditions, be or become fully or partly ineffective, these shall not affect the validity of any other provisions. Provisions being fully or partly ineffective shall be replaced by a provision being as close as possible to the financial effect of the original ineffective provision.

**Bad Bentheim, January 1, 2011**