

# General Conditions for Sale and Supply for Export / Product information of WASA GmbH & Co. KG

## I. Definitions

In these General Conditions for Sale and Supply for Export the following expressions shall have the meanings as hereinafter set out:

- "The Conditions" means these General Conditions for Sale and Supply for Export;
- "WASA" means WASA GmbH & Co. KG including its subsidiaries, holding corporations or firms or related corporations or firms;
- "The Customer" means any person, firm or corporation or legal assignee or successor of such person, firm or corporation;
- "The Goods" means those items which are specified in WASA's written confirmation of order or offer;
- "The Reserved Goods" means those items sold and delivered in which title has not yet passed to the Customer;
- "The Contract" means the agreement between the Customer and WASA for sale and supply of the Goods to the Customer.

## II. General

The Conditions shall exclusively apply to all transactions of WASA. They shall take precedence if the Customer uses its own standard conditions differing from WASA's Conditions. Such conditions are hereby expressly rejected. Moreover, the Conditions shall also apply to all subsequent transactions with the Customer regardless of whether reference to the Conditions has been made or not. Any variations from the Conditions as well as oral, electronic or statements by telephone made by WASA's representatives or authorised agents are always provisional and require WASA's confirmation in writing to be binding on WASA.

## III. Commercial usages

In addition to the Conditions, the Tegnernsee Rules in their current version shall apply to the sale and supply of wooden stacking systems, as far as they do not conflict with the Conditions and as far as no other agreement has been made.

## IV. Size of order

(1) The size of the order is to be determined by WASA's written confirmation of order. In the event that WASA submits an offer open for acceptance within a specified period and that offer is accepted by Customer within that period, WASA's offer shall determine the size of the order. Any amendments to or variations from WASA's written confirmation of order or offer requires WASA's confirmation in writing.

(2) WASA reserves the right to deliver +/- 10 % of the ordered quantity and technically altered Goods, if such minor and/or major quantity and/or technical alteration is reasonable with respect to the Customer's needs.

## V. Prices and terms of payment

(1) Subject to any specific agreement in writing prices are ex works plus the statutory value added tax in the amount as from time to time in force.

(2) Default of payment is determined by the statutory provisions. Notwithstanding WASA's entitlement to claim for further damages caused by a default of payment, in the event of a default of payment WASA is entitled to claim interests at a rate of 8 % over the base rate.

(3) Subject to any specific terms of payment the price must be paid in cash without any deduction and/or charges at WASA's place of payment in the following way:

(a) A down-payment of 1/3 of the price immediately upon the Customer's receipt of the confirmation of order and WASA's respective invoice or immediately upon acceptance of WASA's offer by the Customer and receipt of WASA's invoice;

(b) 1/3 immediately upon WASA having notified the Customer of the readiness of the Goods for dispatch, latest upon receipt of the Goods;

(c) The remaining balance within 30 days after receipt of the Goods, latest within 30 days from the date of notification of the readiness of the Goods for dispatch.

(4) Any right of retention of payment based on alleged remedies of the Customer against WASA, which does not arise under § 320 BGB (German Civil Code) and/or under the same Contract, is expressly excluded.

## VI. Terms of delivery

(1) Any term of delivery is approximate only and not binding, unless confirmed otherwise by WASA in writing.

(2) The delivery period shall commence from the day on which WASA shall forward its confirmation of order. The delivery period will be met if on its expiry the Goods have left WASA's works or if the Customer has been notified of their readiness for dispatch.

(3) The delivery period will be extended by an appropriate amount of time in the event of industrial disputes and in particular but not limited to strikes and lock-outs, and unforeseen obstacles which are beyond WASA's control, insofar as such obstacles can be shown to have exercised a considerable influence on the completion or delivery of the Goods. The aforesaid circumstances are also not to be attributed to WASA if they occur during an already existing delay. WASA shall notify the Customer as soon as possible of the beginning and the end of obstacles of the type mentioned above.

(4) If dispatch is delayed at the wish of the Customer, WASA shall be entitled after expiry of one month after notification of the readiness for dispatch, to invoice the Customer for storage costs with an amount of at least 0.5 % of the invoiced amount for every month of additional storage of the Goods. This rate shall be higher if WASA proves higher damages, or lower, if the Customer can prove lower damages. WASA is entitled to fix an appropriate extended grace period and on its expiry without delivery having been made to dispose otherwise of the Goods and to supply the Customer within an appropriate delivery period at the prices then valid.

(5) Delivery prior to the expiry of the delivery period and partial deliveries are allowed.

(6) Reservation is made that WASA itself is supplied with the material in a punctual and correct way.

## VII. Delay in Delivery and Impossibility of Performance

(1) Notwithstanding Customer's right to withdraw from the Contract in case of defects of the Goods the Customer may withdraw the Contract in the event of WASA's impossibility to perform or a delay in delivery only if the impossibility to perform or the delay in delivery are caused by a negligent or wilful act of WASA.

(2) In the event of a delay in delivery, the Customer shall have the right to set a grace period of at least four weeks indicating expressly that it will withdraw from the Contract and/or claim for damages upon fruitless expiry of the grace period. Upon fruitless expiry of the grace period the Customer shall, upon WASA's request, declare whether it still claims for delivery or for damages or wants to withdraw from the Contract. The Customer is not entitled to withdraw from the Contract or to claim for damages instead of the delivery,

should the Customer fail to notify WASA on its intention to do so within a reasonable period of time set by WASA.

## VIII. Passing of risk

(1) The risk of loss and deterioration of the Goods shall pass the Customer immediately upon dispatch of the Goods to the Customer or collection of the Goods by the Customer. The same applies if WASA has accepted additional obligations, such as transportation costs.

(2) Should dispatch be delayed in consequence of circumstances for which the Customer is responsible, the risk of loss and deterioration of the Goods pursuant to the foregoing clause (1) shall pass the Customer at the date of notification of the readiness of the Goods for dispatch.

## IX. Retention of title

(1) The title in the Goods shall remain with WASA until full payment of the price has been effected including additional claims such as interest and claims arising under any other contract between WASA and the Customer, but always provided that where payment is made by means of bills of exchange, checks or other negotiable or non negotiable instrument, WASA shall not be deemed to have received payment for the purpose of these provisions until the bill of exchange, check or other negotiable or non negotiable instrument has been honoured notwithstanding that WASA may have negotiated it and received value therefore. The title in the Goods as well as any other rights under clause IX. hereof shall remain valid and effective until WASA is totally released from any contingent liability which WASA undertook in the interest of the Customer, in particular, such liabilities as aforesaid resulting from the negotiation of negotiable instruments. The same shall apply if the Customer makes payments with respect to a specific claim. In case of a current account between WASA and the Customer the retention of title shall be deemed collateral for the balance of account in WASA's favour.

(2) The Customer will do any act required by law or otherwise to make the retention of title for WASA valid and effective.

(3) Should the Customer be in breach of the Contract, in particular be in default of payment or breach of its obligation to store and handle the Reserved Goods with due diligence, WASA shall upon prior notice to the Customer have the immediate right to retake possession of and permanently retain any of the Reserved Goods. In such case WASA or WASA's duly authorised agents shall have the right to enter the premises of the Customer and to execute the right to retake possession. WASA shall then be entitled to sell the Reserved Goods and to apply the proceeds of sale first in discharge of the outstanding sum due from the Customer to WASA. Any surplus shall be held upon trust for the Customer. The execution of the right to retake possession or any execution or distress levied upon the Reserved Goods by WASA shall not be construed as an implied repudiation of the Contract.

(4) The Customer may sell the Reserved Goods in the ordinary course of its business if and as long as the Customer is not in default of payment to a bona fide purchaser for value without notice of WASA's rights but the Customer shall then be under a fiduciary duty to account to WASA for the proceeds of such sale up to the total amount due from the Customer to WASA in respect of the Goods or any other contract where payment has not yet been effected. The Customer shall be obliged to deposit any such proceeds from the resale of the Reserved Goods up to the amount of the outstanding balance due to WASA in a separate account and to keep those proceeds apart from other moneys.

(5) The Customer's rights in respect of the Reserved Goods as aforesaid are granted on the condition that the Customer duly complies with its obligations hereunder and restricted to transactions in the ordinary course of business. The Customer is not allowed to dispose in any other way of the Reserved Goods, in particular to execute a bill of sale, to create a charge or any other legal or equitable instrument in order to give security to its creditors

(6) WASA may at any time revoke the Customer's power of sale by giving notice to the Customer if the Customer is in default of payment of any sum whatsoever due to WASA or if WASA has bona fide doubts as to the solvency of the Customer.

(7) The Customer's power of sale shall automatically cease at any time upon occurrence of any of the following events:

(a) If the Customer commits any act of bankruptcy or compounds or makes any arrangements with its creditors or executes a bill of sale on its assets or any part thereof or if any execution or distress is levied upon the Reserved Goods;

(b) if the Customer being a company is wound up either compulsorily or voluntarily or a receiver on its assets is appointed;

(8) Should any execution or distress be levied upon the Reserved Goods, the Customer shall without delay notify WASA thereof and deliver to WASA any documentation required in order to object such execution of distress. The costs for any action taken by WASA in order to defend its rights as against third parties shall be born by the Customer provided that a court did not finally charge these costs to the third party and these costs have been refunded by such third party.

(9) Should the value of the Reserved Goods be more than 20 % in excess of all the sums due from the Customer to WASA, then WASA upon the Customer's request is prepared to transfer title in the Reserved Goods to the Customer and to release such Goods as aforesaid accordingly to the extent necessary to eliminate such excess.

(10) The Customer shall insure the Reserved Goods to an appropriate extent at its own expense against damages caused by fire, water, theft and transportation. The Customer hereby assigns to WASA any claims against the insurer. WASA hereby accepts such assignment. The Customer undertakes to do any act required by law or otherwise to make the assignment as aforesaid valid and enforceable.

(11) Notwithstanding any of the provisions under clause IX. hereof, WASA may maintain an action for the price of the Goods and the execution of any right whatsoever conferred to WASA by virtue of the Conditions shall be in WASA's sole discretion.

## X. Notice of defects

(1) Written notice of apparent defects or any other complaints must be given without delay at latest 10 days from the receipt of the Goods. Notice of hidden defects must be given without delay at latest 10 days from the discovery of such defects but not later than 12 months from the receipt of the Goods.

(2) After expiry of the periods mentioned above under clause X. (1) hereof, WASA shall be discharged from all liabilities arising from defects of the Goods and any right of the Customer of whatsoever nature with respect to such defects is excluded.

## XI. Warranty

(1) Should the Customer notify WASA in accordance with X. of an existing defect of the Goods or of any other complaint as mentioned in X. (1) of the Conditions, WASA's liability shall, according to WASA's choice, be limited to either replace or repair such defective Goods, provided that the Customer shows that the defect or any other complaint was

already existent at the point in time of the passing of the risk. The foregoing sentence shall not apply to defects caused by third parties' Intellectual Property rights. To such defects clause XII. of the Conditions shall apply instead. The warranty period shall run for 12 months following the actual delivery of the Goods. WASA shall be liable for a period of 24 months following the actual delivery of the Goods in the event of death or personal injury of the Customer caused by defective Goods if WASA is responsible for such defects. WASA shall not be liable for defects of used or second hand Goods.

(2) The Customer has to grant WASA the time and opportunity reasonably required to assert the claimed defects. Upon WASA's request the allegedly defective Goods have to be returned to WASA. Should the Customer's notice of alleged defects be without merits, WASA is entitled to claim for all losses, costs and other expenses caused by such notice. If the notice is justified, the Customer has to grant WASA the time and opportunity necessary to make a repair or a replacement delivery. Any Goods or parts thereof which have been replaced by WASA in consequence of its liability for defects shall be the property of WASA. WASA's liability is excluded with regard to any repair which has been made without WASA's prior consent by the Customer or a third party.

(3) Should the defect not have been remedied by WASA either by two attempts to repair the Goods or one replacement delivery, then the Customer shall be entitled to claim for damages according to XII. hereof and (i) to request a reduction of the price agreed upon instead of repair or replacement or (ii) to withdraw from the Contract. The same shall apply mutatis mutandis if WASA unjustifiably refuses a necessary repair or delays such repair without good reasons, or if it would be unreasonable to require the Customer to accept such repair for any other reason whatsoever and howsoever rising, or if § 281 (2) or § 323 (2) BGB apply.

(4) WASA is under no obligation to repair or to replace defective Goods, if the costs for such repair or replacement delivery are unreasonably high. The costs shall be deemed unreasonably high if they exceed 25 % of the purchase price of the Goods. In such case the Customer is entitled to the statutory remedies.

(5) Should the Customer transfer the Goods to a place different from the place of delivery and should the costs for repair or replacement delivery, including but not limited to costs for transport, work and material, therefore increase, the Customer shall only be entitled to claim for the costs that would also have arisen in case the Goods still had been at the place to which they were first delivered, unless such transfer of the Goods corresponds to their normal use.

(6) Without limiting WASA's liability for defects any liability arising in particular on the following grounds is expressly excluded: irrelevant deviation from the agreed quality of the Goods and irrelevant reduction of the fitness of the Goods for a specific purpose, inappropriate or improper use of the Goods, defective installation or commissioning by the Customer or any third party, incorrect or wrong handling of the Goods, in particular the non observance of operation instructions, excessive work load and use of inappropriate working or substitute materials, provided that the damages caused by such circumstances are not attributable to WASA acting grossly negligently or wilfully. WASA is not liable for any damages resulting from inappropriate modifications of the Goods or maintenance works made by the Customer or third parties.

(7) WASA's liability for defects in respect of products which have been supplied by a third party shall be limited to assigning the rights and claims as against such third party to the Customer. Should the Customer not be able to enforce its rights against the supplier of such goods as aforesaid, WASA shall be liable for the defects as set out in the Conditions.

#### **XII. Warranty of title**

(1) Unless otherwise agreed WASA shall deliver the Goods free from third parties' rights or justified claims with respect to industrial or other intellectual property ("Intellectual Property") in the country being the destination of WASA's delivery. In case any third party shall assert a claim against the Customer founded on the violation of Intellectual Property by the Goods that have been delivered by WASA and that are used in correspondence with the Contract, WASA shall be liable for a period of 12 months following delivery as follows:

(2) WASA's liability shall, according to WASA's choice be limited to either provide a licence covering the Intellectual Property, modify the Goods insofar that they will no longer violate the Intellectual Property or replace the Goods. Should WASA be unable to take such measures on usual and reasonable conditions, the Customer may withdraw from the Contract or request for a reduction of the price or/and claim for damages according to clause XII. hereof.

(3) WASA shall be under no obligation to take the measures as mentioned in clause XI.

(2) above if the Customer has not immediately notified WASA in writing about such third parties' claims and/or if the Customer has acknowledged the violation of Intellectual Property rights and/or prejudiced in any other way WASA's defence against such third parties' claims. Should the Customer stop the use of the Goods in order to minimise the damage or for any other good reason, the Customer is under an obligation to notify the third party that this shall not be deemed an acknowledgement of the violation of Intellectual Property.

(4) Any claim of the Customer for defects of title are excluded if and to the extent the Customer is responsible for the violation of the Intellectual Property, including but not limited to the following cases: the Customer has caused the violation by giving specific instructions to WASA with respect to the design and/or construction of the Goods or by using the Goods in a manner that has not been agreed upon by the parties or by modifying the Goods or using them together with products that have not been delivered by WASA.

(5) Any other claims for defects of title are excluded.

#### **XIII Damages**

(1) Notwithstanding any other provision in the Conditions all claims for damages of the Customer, i.e. liability for defects, liability for impossibility of performance and delay in delivery, any liability for damages arising from a breach of any obligation before or at the time of contracting, breach of secondary contractual obligations, tort, or any other consequential loss or damage of whatsoever nature and howsoever arising shall be excluded. The same applies if the damage was caused by WASA's duly authorised agents.

(2) WASA shall only be liable if and to the extent that it can be shown that WASA, WASA's executives and/or WASA's duly authorised agents were acting wilfully or with gross negligence, including such cases in which WASA was in breach of cardinal obligations whereby the overall purpose of the Contract was jeopardised. WASA shall not be liable for an irrelevant breach of its obligations.

(3) In case of a negligent breach of cardinal obligations, WASA's liability shall be limited to the amount of the value of the order. Should, as an exception, the value of the order not correspond to the typically foreseeable damages that arise from such breach of cardinal obligations, then WASA's liability shall be limited to such typically foreseeable damage.

(4) The exclusion of liability shall not apply with regard to claims arising under the German

Product Liability Act or in case WASA has given a guarantee as to the fitness of the Goods for a specific purpose or as to their long-lastingness.

(5) Should WASA by ordinary negligence omit to give before or after the conclusion of the Contract the necessary instructions or not observe secondary obligations - in particular instructions for the operation and maintenance of the Goods - and thereby cause a damage or loss for the Customer, WASA's liability from such omission or non-observance as aforesaid is expressly excluded without prejudice to any liability for a grossly negligent or wilful act.

#### **XIV. Right of withdrawl**

(1) WASA shall be entitled to withdraw from the Contract especially in the following cases:

(a) In the event of force majeure as set out under VI. (3) of the Conditions provided that these events last for more than three months or make it ultimately impossible for WASA to deliver the Goods;

(b) in the event that after conclusion of the Contract circumstances relating to the Customer become known to WASA which throw doubts on the question of the Customer's credit-worthiness or ability to pay its debts in which case WASA is alternatively entitled in its sole discretion to refuse performance or to request suitable security.

(2) The Customer shall have no right of whatsoever nature against WASA to claim damages for losses of any kind arising from the execution of the right granted under foregoing sub-clause (1).

#### **XV. Trading terms**

(1) The INCOTERMS 2000-Version are applicable subject to specific provisions of the Conditions or the Contract which shall prevail.

(2) In case of a delivery DDU ("delivered duty unpaid") the Customer has to bear the costs and risks of duty which term includes the responsibility for and the risks of the carrying out of customs formalities, and the payment of formalities, customs duties, taxes and other charges, in particular, but not limited to any cost including storage cost and other risks caused by Customer's failure to clear the Goods for import.

#### **XVI. Applicable law**

The Conditions and any Contract hereunder between WASA and the Customer shall be governed by and construed in accordance with the laws of the Federal Republic of Germany. The UN-Convention on Contracts for the International Sale of Goods shall not apply.

#### **XVII. Place of performance / jurisdiction**

(1) Place of performance for WASA and the Customer is Neubrunn, Federal Republic of Germany.

(2) Jurisdiction and venue for any actual or future claims under the business relationship (including claims under bills of exchange or cheques) is the Regional Court ("Landgericht") of Meiningen, without prejudice to WASA's right to commence proceedings at the Customer's principal place of business.

#### **XVIII. Final provisions**

(1) The headings of the above provisions are for convenience only and have no importance for the interpretation of the conditions.

(2) Should any of these provisions be or become invalid for whatsoever reason the remaining provision shall remain unaffected. In such case, the statutory regulation shall be applicable in addition.

(3) Where appropriate in the Conditions the singular shall include the plural and vice versa and where there are two or more persons, firms or companies comprised in the definitions of the Customer, then the obligations imposed on them shall be joint and several obligations.

#### **XIX. Important for Wet Cast Moulds**

(1) Wet Cast Moulds should not be stored in the sun. Wet Cast Moulds should be sprayed with special release oil whilst they are in use. The handling instructions enclosed to the delivery have to be observed unrestrictedly. If the handling instructions are not observed, any claims for losses caused by such non-observance are excluded according to XI. (6) of the Conditions.

(2) Tolerances: Length:  $\pm < 1\%$ ; width:  $\pm < 1\%$ ; thickness:  $\pm < 1\%$ .  
All tolerances refer to the time of delivery.

#### **XX. Important for wooden stacking systems**

(1) Wooden stacking systems should not be stored in the sun. Wood is a living products. It may alter its structure if it dries up. Therefore, the handling instructions enclosed to the delivery have to be observed unrestrictedly. If the handling instructions are not observed, any claims for losses caused by such non-observance are excluded according to XI. (6) of the Conditions.

(2) Tolerances: Length:  $\pm 2.0$  mm; width:  $\pm 2.0$  mm; thickness:  $\pm 1.0$  mm.  
All tolerances refer to the time of delivery.

#### **XXI. Important for plastic stacking systems**

(1) Plastic stacking systems should not be stored in the sun. In general plastic stacking systems must be sheltered from a single-sided warming. In case of failure to comply with the aforementioned instructions claims for damages are excluded according to XI. (6) of the Conditions.

(2) Tolerances: Length:  $\pm 2.0$  mm; width:  $\pm 4.0$  mm; thickness:  $\pm 1.0$  mm.  
All tolerances refer to the time of delivery.

#### **XXII. Weight of products / Value of bending / Tolerances**

These values are based on theoretical calculations and are therefore not binding. All tolerances refer to the time of delivery.