

General terms and conditions of supply and warranty of Weidemann GmbH

§ 1 Generalities – Applicability c

1. Only these present general terms and conditions of supply and warranty of Weidemann GmbH (*hereinafter referred to as 'Weidemann'*) are to be applicable to all contracts. The terms and conditions of purchase of the purchaser are not to be applicable in such cases. Any divergent agreements, in particular contradictory terms and conditions of business of the purchaser as well as any side agreements, are to require the written approval of Weidemann for their validity.
2. These conditions form an integral part of all of our offers and contracts on deliveries and performance of the actual and future business relations.
3. Any divergences agreed are only to apply to the contract in hand. Alterations to these present terms and conditions are only to become effective when the purchaser is given notice thereof.

§ 2 Conclusion of Contracts

1. All offers and cost estimates are subject to change. All orders, whether placed directly, or via our representatives, as well as special arrangements, need to be confirmed in writing by Weidemann. The acknowledgement of order is authoritative for the matter of the contract. Weidemann hereby reserves the right to make technical alterations when such serve technical progress or improved use and/or operational security, respectively. The purchase conditions of the purchaser are not binding on Weidemann, even if Weidemann does not contradict them explicitly.
2. The purchaser shall be bound to its order for 6 weeks. The purchaser may only withdraw from the contract, if Weidemann does not accept or acknowledge the order within this period. But such an order will not automatically become redundant thereby.
3. The indications given in the seller's brochures of which the copyright is with Weidemann concerning weight, dimensions and figures are not binding and only approximate values. The purchaser is not entitled to any special claims resulting from any deviations.
4. If the acknowledgement of order differs from the order itself, the contract shall be regarded as having been accepted according to the acknowledgement of order, if the purchaser does not contradict in writing within 3 days.
5. In principle the order is only binding to the scope and supply and as confirmed by Weidemann. All other additional agreements, even if they have been defined in writing on the order, are only valid, if they do not contradict these conditions or have been confirmed in writing by Weidemann.
6. The purchaser is not entitled to withdraw from the contract due to non-acceptance of additional or contradictory agreements. No legal rights shall arise to the purchaser that Weidemann accepts additional agreements. The acceptance or non-acceptance of such agreements is at the own discretion of Weidemann.
7. All other or contradictory terms are only binding to Weidemann, if Weidemann accepts them expressly and in writing.

§ 3 Prices

1. The prices of Weidemann are understood in Euros if not indicated otherwise, plus the legal value-added tax.
2. If no fixed prices have been agreed upon explicitly, the prices valid on the day of delivery shall apply. Admissible recalculations valid on the date of delivery and the raising of prices and taxes shall be regarded as having been agreed upon.
3. If no special arrangements have been made, the prices are ex works, but without packing. Weidemann hereby reserves the right to alter its prices appropriately when, after the conclusion of a contract, decreases or increases in costs occur. Such are to be evidenced to the purchaser on demand. The foregoing also includes any increase in gross prices as a result of changes in the rate of value added taxation.

§ 4 Conditions of Payment

1. The invoices issued by Weidemann are to be paid with immediate effect in cash without any deductions and with the inclusion of the collection charges incurred by Weidemann. When bills of exchange or cheques are accepted by Weidemann, such shall be deemed only as settlement and not as payment until collected without dispute.
2. Parts having a value of up to 50.00 Euro are not taken back and will not be exchanged.
3. If the date of payment is exceeded, or payment is suspended, all special reductions, discounts, freight compensations etc. shall not apply.
4. Beginning from the 30st day counted from the receipt of the invoice or an equivalent request for payment, default interest will become due. This shall also apply in case of eventual prolongation of payment or other agreements. According to § 288 II of the BGB (German Civil Code) the default interest is at least 8% above the basis interest rate according to § 247 BGB (German Civil Code). Weidemann reserves the right to prove and to enforce a further compensation for delay. No discount or reduction is granted for invoices amounting up to 50.00 Euro. The same applies to orders where second-hand machines are taken back. It is at the own discretion of Weidemann to send the parts cash on delivery.

§ 5 Retention/Compensation

1. The purchaser is not entitled to transfer any rights from the contracts with Weidemann to a third party without its prior written consent.
2. If Weidemann does not contradict any counterclaim of the purchaser or the counterclaims are due and legally ascertained, the purchaser is not authorized to refuse its performances, to retain or to set them off against eventual demands from former business of the actual business relation.

§ 6 Credit Protection/Credit-Worthiness

1. When the order is accepted the credit-worthiness of the purchaser is assumed. Weidemann reserves the right to call for securities or to stop the execution of the order, if on the basis of later information there are justified doubts in the credit-worthiness of the buyer.
2. If bills are not discounted by the bank or cheques are not accredited, or in other circumstances where a lack of solvency of the purchaser may be concluded, Weidemann is entitled to demand the immediate cash payment of all outstanding debts, to withdraw dates of payment, and to make possible current documents due without regards to their duration. On cash payment the bills and cheques drawn shall be given back to the purchaser.

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§ 7 Reservation of Title

1. The goods supplied are to remain the property of Weidemann until complete and entire payment, i.e. until the receipt of all financial claims in existence at the point in time of the conclusion of a contract including all financial claims from subsequent orders, follow-up orders and the like. In the case of payment by bill the goods are only regarded as having been paid completely after Weidemann has been released from the liability.
2. Commercially the goods delivered remain the property of Weidemann until all claims resulting from the business relationship, including all claims which arose after the delivery and become due in future, have been paid. In a case of a current account business any negative balance has to be settled.
3. Provided that there is no default of payment and Weidemann has agreed in writing, the purchaser is entitled to process and/or sell the goods delivered under reservation of title and to handle the goods with due care. Any processing or elaboration of the goods supplied will be deemed by Weidemann to be conducted under the reservation of its property rights on condition, that property rights in the processed or elaborated unit concerned shall pass to Weidemann on the basis of proportionate values (invoiced values). The same applies to a connection or mixture with other goods. The purchaser shall keep the co-ownership arising from the modifications, changes, connection or mixture, free of charge.
4. Pledge or assignments by way of security are not allowed. In the case of claims of a third party to the goods delivered under reservation of title, the purchaser shall point out that the goods are the property of Weidemann and inform Weidemann immediately.
5. Any claims resulting from the resale or other legal reasons (insurance benefit, inadmissible action) with relation to the goods under reservation of title, shall be transferred to Weidemann. If Weidemann is only co-proprietor of the object, the transfer is limited to the invoiced price of the goods. The purchaser may call in the debts for claims transferred with regular business transactions. This authorization may be withdrawn, if the purchaser does not meet its payment obligations in time, or, for other reasons which could lead to a violation of our rights. Upon request the purchaser has to inform its debtors of the transfer of the claim and give to Weidemann the information and documents required for the independent enforcement of the demands transferred.
6. As soon as the purchaser is in default, in whole or in part, with its obligation or the purchaser violates its obligation, a return of the goods under reservation of title combined with a withdrawal from the sales contract (§ 449 II German Civil Code), may be demanded or a period of grace to comply with the terms of payment be fixed. Infringements of the foregoing contractual duties are to be, among other things, payment arrears of the purchase price, any sundry infringements of contractual duties (e.g. incorrect treatment of the subject matter of the purchase) as well as any onward sale of the subject matter in infringement of contractual duties. Without express withdrawal from the sales contract all other contractual obligations of the purchaser shall remain valid.
7. Provided that the purchaser has been released from its obligation to accept delivery and the goods have been taken back by Weidemann, Weidemann may demand damages of 25% of the amount invoiced due to non-performance. The contractual parties hereby expressly declare and agree, that such an amount is not, on the basis of a normal treatment of the matter, in any event to exceed the amount of any anticipated damages. Should a greater amount of damages be incurred, such is to be evidenced to Weidemann in detail. A minor loss can be proved by the purchaser. If the securities in form of goods that Weidemann is entitled to exceed more than 20% of the claims to be secured, Weidemann is prepared to release these securities correspondingly upon request of the purchaser and as decided by Weidemann.

§ 8 Delivery Period

1. The delivery period given with reservation presupposes that the approvals, drawings, releases etc. required are presented on time. All the contractual duties of participation on the part of the purchaser are, in particular to be conscientiously complied with as a material precondition.
2. Any alterations in a contract or the occurrence of unanticipated circumstances outside of operational activities not under the sphere of influence of Weidemann, are to have the effect of appropriately and reasonably postponing any delivery time period, for at least the duration of the delay, unless Weidemann confirms an alternative delivery time period. The foregoing are also to include temporary hindrances in the fulfilment of Weidemann incurred by subcontractors and suppliers, for which Weidemann cannot be held responsible.
3. The delivery dates are only binding, when they have been agreed upon expressly and in writing. Partial deliveries are agreed upon to be permitted.
4. Should unforeseen circumstances arise at the works of Weidemann or those of the subcontractor, such as breakdowns, rejects, delays in delivery of essential raw or engineering material being of great importance on the completion or the delivery of the object, the time of delivery shall be prolonged accordingly.
5. Claims for damages or penalties for delayed delivery may only be demanded in the case of intent or gross negligence on our part. Art 348 of the 'HGB – Handelsgesetzbuch' (German Commercial Law Code) shall not apply.
6. When the dispatch is delayed upon request of the purchaser, Weidemann will charge the costs arising from the storage of the goods but at least 0.5% of the invoice amount for each month started and beginning one month after the purchaser has been informed that the equipment is ready for dispatch. Weidemann is entitled to dispose of the goods otherwise after having fixed an acceptable period and to deliver with an appropriately prolonged delivery period at unsuccessful expiration of the term.

§ 9 Acceptance

1. If an accept of the equipment is desired and carried out, the conditions thereof have to be determined on entering into the contract at the latest and to be confirmed in writing by Weidemann.
2. The acceptance has to take place at the contractor's plant immediately after the purchaser has been informed that the equipment is ready for dispatch. The purchaser will be charged with the cost of the acceptance.
3. If an acceptance is not desired, the goods shall be regarded as having been delivered according to the conditions at their dispatch from the works of Weidemann.

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§ 10 Transfer of Risk, Receipt, and Place of Jurisdiction

1. Place of jurisdiction is the works of Weidemann at Diemelsee-Flechtdorf.
2. The risk is transferred to the purchaser on acceptance or receipt, or on delivery of the goods at the latest. The same shall apply to partial deliveries, or, if other contractual obligations, such as transport, installation or commissioning still have to be carried out by Weidemann. Upon the request of the purchaser, Weidemann will insure the goods at the cost of the purchaser against breakage, damages caused by transport, fire and water.
3. If the transport is delayed due to circumstances for which Weidemann cannot be held responsible, the risk shall be transferred to the purchaser from the day on which the equipment is ready to be dispatched; Weidemann is, however, obliged to effect a policy of insurance at the cost of the purchaser and as requested by him.

§ 11 Exoneration of Weidemann

The purchaser hereby declares and agrees to keep Weidemann harmless in entirety from all claims of third parties against Weidemann if and in so far as goods supplied and services rendered on the part of the purchaser are causative for such claims.

§ 12 Withdrawal Reservation

Weidemann hereby reserves, at its discretion the right to withdrawal or to require a surety for supplies, when, after the conclusion of a contract, a decline in its assets situation is suffered by the purchaser, in particular insolvency or over-indebtedness, or when Weidemann subsequently becomes aware of an existent worsening of the financial position of the purchaser at the point in time of the conclusion of a contract, of which it was previously unaware.

§ 13 Warranty

1. Weidemann hereby warrants, within the scope of the following terms and conditions, that the subject matter of the purchase is free from material and legal defects and complies with the agreed characteristics. The granting of the warranty assumes, that the purchaser has entirely complied with the requirements of Art. 377 of the 'HGB' (German Commercial Law Code) as regards the duty of inspection and complaint. Otherwise, the goods shall be deemed as approved.
2. The purchaser is under a contractual duty hereby to send the servicing card to Weidemann within 14 days of date of delivery. For the warranty to remain valid, the purchaser has to execute and to prove the execution of the inspections defined by Weidemann.
3. Defect claims on the part of the purchaser are to require a written and complete description of the asserted defects to be submitted to Weidemann.
4. Should the subject matter of the contract be defective, then Weidemann at its discretion can initially select to remove the defect or to supply replacement subject matter free of defects.
5. To lodge any claims under guarantee the purchaser shall inform Weidemann immediately in writing, within 7 days after detection at the latest, of the defects. He must state in detail: the cause of the defect (as far as possible by providing photos and/or sketches), date of the purchase contract and delivery date, name and address of the representative or of that person from whom the machine was purchased, vehicle and chassis type identification number and special options as well as the number of operating hours. For being able to keep the terms of our subcontractors the completed guarantee must be returned to us within 3 weeks after repair. All replaced parts shall be attached to the guarantee.
6. Should a complaint be unjustified, then the purchaser is to bear the costs thereby incurred and also when the circumstances leading to the unjustified complaint were unknown to the purchaser as a result of gross negligence.
7. The guarantee is limited to those defects which have existed ascertainable before the transfer of risk. Simple settings and repairs which do not require more than one hour can be carried out by the purchaser without prior consent of Weidemann. More extensive works must be agreed with Weidemann in writing according to the printed form. The parts exchanged shall become property of Weidemann. If the purchaser does not grant sufficient time for repair work or compensation deliveries after having informed Weidemann of any defects, Weidemann shall be released from the warranty of defects. The original guarantee period for the delivered part itself shall not be prolonged upon delivery of a replaced part and/or a repaired part. If according to prior agreement with us defects are repaired by authorised specialised workshops, the costs involved have to be submitted together with the guarantee. The standard times and remuneration rates defined by Weidemann shall apply. Weidemann will only reimburse travel expenses up to a maximum total distance of 300 km and a total driving time of 3.5 hours. The guarantee is limited to the gratis replacement of the material.
8. The liability of the seller for third party products is the same as those of the subcontractor.
9. Defect claims shall not obtain, when the defects occurring are in causative connection with previously occurring defects not reported in due time as per Art. 13.5 hereof. No responsibility is taken for normal wear and tear or for damages caused by: unsuited or improper use, faulty installation, operation under extreme conditions, use of inappropriate operating material or for consequences from improper works performed at the engine, the hydraulic and electronic components.
10. The guarantee of Weidemann does not cover any defects resulting from the construction and material definitions of the purchaser.
11. The guarantee shall become invalid, if the product is changed by a third party or by integrating parts of a subcontractor, if the repair is not executed by an authorised special workshop or by using non-original spare parts. Furthermore we do not accept any responsibility if our operating manuals are not observed, if the goods are resold by the customer or if the seals at the components have been damaged.
12. The purchaser does not have any further titles, especially a claim for compensation for damages to parts that were not included in the delivery contract. The notice of defect has no influence on the payments obligation of the purchaser, a right of retention shall be excluded.

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13. In case of any subsequent failure of- or unsuccessful subsequent -fulfilment, the purchaser can at its discretion withdraw from a contract or require the purchase price to be reduced and claim indemnity damages instead of fulfilment as per the stipulations of Art. 15 hereof when Weidemann seriously and finally repudiates subsequent fulfilment as per Art. 13.4 hereof, or when the form of subsequent fulfilment selected by Weidemann cannot be reasonably expected of the purchaser or when the purchaser has unsuccessfully set Weidemann a reasonable time period for such fulfilment. Subsequent fulfilment is to be deemed as having failed after an unsuccessful third attempt, unless another situation might arise out of the type of circumstance or defect, or upon other grounds.
14. The purchaser is to have no claim hereunder to subsequent fulfilment or to a certain form of subsequent fulfilment. Should the purchase price not have been paid in whole or in part, Weidemann is to be entitled to make any subsequent fulfilment dependent on the purchaser paying an appropriate part of the purchase price under consideration of the defect claim asserted.
15. The entitlement to withdrawal from a contract and to indemnity damages instead of fulfilment as per Art. 13.13 is hereby excluded when and in so far as the defects asserted fail to restrict, in whole or in negligible part the suitability of the subject matter - or subject matter of similar type – in its contractually envisaged usual employment.
16. Any liability of Weidemann for defects on already used goods is generally excluded hereunder, unless the purchaser has, in individual cases received express consent to a warranty in writing.

§ 14 Statute-barring of defect claims

1. The entitlement of the purchaser under Arts. 13.4 and 13.13 hereof to a reduction in the purchase price or to withdrawal from contract, is to become statute-barred one year after the passing of the perils in the subject matter of the purchase.
2. When the subject matter of the purchase is new, statute-barring is to apply before the expiry of the one year time period, when and in so far as the the operating hours on the machine counter have reached 1250 operating hours, as, on the basis of the characteristics of the machine, such an amount of operating hours corresponds with the appropriate and usual annual amount of use.
3. The effect of statute-barring is however to be restricted as long as negotiations are in progress between Weidemann and the purchaser concerning defect claims or circumstances justifying such are pending. Such restrictions are to commence with a written notice of defects submitted by the purchaser and is to terminate with the written rejection of any defect claims on the part of Weidemann, at the latest however 2 months after the submission of the last written declaration of one of the parties within the scope of such negotiations.

§ 15 Liability

1. If not otherwise agreed upon in these conditions or in separate agreements, any claims for damages against Weidemann and its employees are excluded, if no gross fault or any other mental element of offence can be reproached. Weidemann shall be only liable for gross fault of its legal representatives and executives.
2. As far as legally admissible, Weidemann and its employees shall not be liable for loss of profit, savings, claims for damages of a third party against the purchaser and other consequential damages.
3. The liability of Weidemann for other types of claim in cases of the slight negligent infringement of a main contractual duty on the part of Weidemann or of its subcontractors or suppliers, is to be limited to indemnities in respect of immediate, foreseeable, average and contractually-typical loss or damage. Weidemann is not to be liable for any slightly negligent infringement of immaterial contractual duties hereunder.
4. Any other material- or legal liability of Weidemann is hereby declared and agreed to be excluded hereunder, unless Weidemann fraudulently conceals such or has adopted a warranty for the characteristics of the goods concerned.

§ 16 Place of Jurisdiction and Performance

1. Place of jurisdiction is the works of Weidemann at Diemelsee-Flechtdorf.
2. Exclusive place of jurisdiction for both parties for all disputes arising directly or indirectly from this contractual relationship, from documents, bills and cheques is the Municipal Court in Korbach or the Regional Court in Kassel.
3. The law of the Federal Republic of Germany shall be applicable.

§ 17 Validity of Contracts

In case of alterations in, invalidity or failure to include various of such in these present terms and conditions, it is hereby declared and agreed, that all other clauses are to remain, as far as possible, permissible, unaffected and valid. In regard to clauses, which no longer exist as an integral part of the contract, or which become ineffective, the statutory requirements of the Federal Republic of Germany are exclusively to apply.

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