

Westland Gummiwerke GmbH & Co. KG / Konrad Wiese GmbH / Westland Walzentechnik GmbH

General Terms and Conditions of Sale and Delivery

1. Scope of application

- 1.1. The General Terms and Conditions of Sale and Delivery set out below shall apply exclusively to all our sales and other deliveries of goods and services completed in the course of commercial transactions. We shall only be obliged to adhere to deviating conditions or declarations to the contrary submitted by the customer if and to the extent that we give our specific consent. Failure on our part to respond in such circumstances shall in particular not be construed as acknowledgement or consent in this respect. All such differing conditions or declarations to the contrary on the part of the customer are hereby expressly rejected.
2. **Conclusion of the agreement/Scope of delivery**
 - 2.1. Our quotations are non-binding. No orders shall be considered accepted until we have confirmed such acceptance in writing or until the goods concerned are delivered. In the event of immediate delivery by us, the written confirmation of order can also be substituted by our invoice.
 - 2.2. All verbal ancillary agreements, assurances and all covenants of any kind must be confirmed in writing by the parties to the agreement.
 - 2.3. The scope of delivery shall be as shown in our written confirmation. Deliveries that exceed or fall short of the ordered amount by normally-accepted margins shall be permitted. References in quotations and brochures to norms, standards, comparable technical regulations, other technical details, descriptions and/or illustrations of the items delivered are given for descriptive purposes only and are not to be construed as any form of assurance or guarantee as to specific qualities or performance. Any assurances or guarantees concerning specific characteristics of the goods supplied shall only be valid if they are expressly confirmed by us.
 - 2.4. In the case of call orders, we shall be entitled to acquire the material for the entire contract and to manufacture the total order quantity with immediate effect. Unless otherwise agreed, changes requested by the customer after the order has been placed can therefore no longer be taken into account.
3. **Prices**
 - 3.1. Our prices are understood to be subject to value-added tax (VAT) at the currently valid rate. We reserve the right to invoice packing costs separately on a pro rata basis.
 - 3.2. In the case of goods delivered carriage-paid, we shall select the means of despatch most economical for us.
 - 3.3. If the purchaser specifies a particular means of despatch, the purchaser shall be responsible for any additional costs arising. If freight costs, insurance costs and/or public fees or charges (e.g. customs duties or import/export tariffs) are newly introduced or increased after the conclusion of the agreement, we shall be entitled, including in cases of shipments delivered with carriage and customs duties paid, to add such additional costs to the agreed purchase price.
 - 3.4. We shall be entitled to adjust our prices to reflect any changes that might arise after the conclusion of the agreement with respect to material procurement costs, direct and indirect payroll costs and energy costs, provided there is a period of at least six (6) weeks between the conclusion of the agreement and the date of delivery.
 - 3.5. Prices shall be calculated on the basis of unit-counts or weights determined at the supplying plant or our warehouse.
4. **Delivery/Delivery time**
 - 4.1. Delivery times and deadlines must be expressly agreed to in order to become binding. In the case of non-binding or approximate delivery times and deadlines (e.g. those defined with "approx.", "around", etc.), we shall make our best efforts to meet them.
 - 4.2. Delivery periods shall be counted from the date of receipt on the customer's premises of our order confirmation, and in any case not before all details regarding the execution of the order have been clarified and all obligations corresponding to the customer have been fulfilled. The same shall apply to delivery deadlines.
 - 4.3. Deliveries may be completed before the delivery time expires. The day of delivery shall be defined as the date of issue of the notification of readiness for despatch or, failing that, the date on which the goods are despatched.
 - 4.4. In the event of a delay in delivery for which we are responsible, the customer may, after expiry of a reasonable extension to the deadline, withdraw from the agreement in whole or in part. Claims for loss and damage arising from delayed or unfulfilled delivery, for whatever reason, shall be subject exclusively to the provisions of Clause 10 of this document.
 - 4.5. The existence of a delay in delivery on our part shall be as defined in law, and, in each case, be subject to the customer having to issue a corresponding formal reminder.
5. **Reservations arising from own deliveries/Force majeure and other hindrances/Import and export permits**
 - 5.1. The observance and fulfilment of our obligations to supply and deliver require correct and timely delivery by our own suppliers.
 - 5.2. We shall be entitled, in the event of circumstances arising from force majeure, to delay delivery for the duration of the situation concerned or, acting as a consequence of the part of the order that is not yet fulfilled, to withdraw in whole or in part from the agreement. Force majeure shall be defined as, but not be limited to, disputes, lockouts, intervention by government authorities, shortages of energy and raw materials, bottlenecks in the transport system and/or circumstances beyond our control, including but not limited to fire, flood and machine damage, and any other hindrance not attributable to us.
 - 5.3. If necessary official import or export permits are not issued, or if fulfilment of the agreement is impossible or becomes so due to official prohibitions on importing or exporting, or similar hindrances not attributable to us, we may, even if we have previously undertaken to obtain an import or export permit, withdraw from the agreement, with no grounds for the customer to bring claims against us in this respect.
 - 5.4. If a delivery time or delivery deadline is agreed as binding and the time or deadline is exceeded by more than six (6) weeks as a result of circumstances conforming to Clauses 5.2 or 5.3 of this document, the customer shall likewise be entitled to withdraw from the agreement on the grounds that part of it has not yet been fulfilled.
6. **Dispatch and transfer of risk**
 - 6.1. Unless otherwise agreed, we shall despatch deliveries uninsured and at the customer's cost and risk. We reserve the right to select the transportation route and means of transport to be used.
 - 6.2. All risk shall be transferred to the customer at the moment in which the goods being delivered are handed over to the carrier, freight forwarder or other party engaged to carry out the shipment, and in any case no later than when the shipment leaves the corresponding production works, warehouse or branch premises. This shall also apply if we have undertaken to carry out delivery. All transport damage must be recorded immediately on the corresponding delivery note and, in the case of delivery by railway and/or postal mail, be duly established by the railway or postal service. We can arrange for transport insurance at the customer's specific request and expense.
 - 6.3. If the shipment is delayed due to our exercising our right of retention on the grounds that the customer is in arrears with his payments, or for any other reason attributable to the customer, the transfer of risk shall occur no later than at the moment in which the corresponding notification of readiness for dispatch is issued to the customer.
 - 6.4. The customer must immediately call up the shipment of goods that has been made ready for despatch and is due for delivery. If goods prepared for despatch are not immediately called up and accepted, we may, at our discretion, despatch the goods in any case or put them into storage at the customer's expense. Unless otherwise agreed, this shall also apply if, in the case of call-off orders, the customer fails, within a period of six (6) months, to specify and call up the goods concerned. We shall also be entitled to put goods into storage in the event of failure, for reasons not attributable to us, to despatch the corresponding shipment.
 - 6.5. If the customer fails to accept delivery in a timely manner, or, in the case of call-off orders, fails to call up the goods in a timely manner, or if despatch is otherwise delayed for reasons attributable to the customer, we shall, having granted an extension of 14 days to no avail, be entitled to demand immediate payment of the purchase price. We may also alternatively, upon expiry of this extension, withdraw from the agreement or, in the event of a call-off order, withdraw from that part of the agreement that is not yet fulfilled, or refuse fulfilment and demand compensation for loss and damage on the grounds of non-performance.
7. **Complaints and warranty claims**
 - 7.1. If the customer is a business person under the terms of the German Commercial Code (HGB), defects reported by the customer shall be subject to the customer having fulfilled its legal obligation to examine the merchandise and make the corresponding claim. The customer must inspect the goods immediately upon arrival, provided that this can be carried out in the normal course of business, and submit to us, likewise immediately, a written report of any defects that might be detected. If the customer fails to submit such a report, the goods shall be considered accepted, unless the nature of the defect is such that it could not be detected during inspection. If such a defect becomes apparent subsequently, a corresponding written report must be submitted immediately after discovery of the defect concerned; otherwise the goods shall be considered accepted despite the presence of this defect. Timely despatch of the report concerned is sufficient to conserve the customer's rights in this respect.
 - 7.2. We shall not accept liability for defects resulting from deterioration due to natural wear and tear, incorrect or negligent use, improper or unsuitable storage or use, or failure to observe the instructions regarding handling and use. If items are supplied on the basis of drawings, specifications, samples, guidelines, etc. provided by the customer, the customer shall be responsible for ensuring the suitability of each item for its intended purpose.
 - 7.3. If a delivered item is defective, we shall decide in the first instance whether to rectify the situation by correcting the defect (repair), or by supplying a defect-free item (replacement). This shall not affect our right, in the circumstances legally permitted, to refuse to perform such rectification. We shall be entitled to make any rectification of defects on our part contingent on the customer settling the purchase price due. The customer shall, however, be entitled to retain a reasonable part of the purchase price corresponding to the nature of the defect concerned. The customer must grant us the time and opportunity required to rectify such a situation attributable to us and most notably allow us time to test the goods giving rise to the claim. In the event of a replacement being supplied, the customer must, in accordance with legal requirements, return the defective item to us.
 - 7.4. Rectification shall include neither the removal of the defective item nor the installation of its defect-free replacement, unless we originally undertook to carry out installation. The costs and expenses arising from performing inspection and rectification tasks, most notably transport, shipping, labour and material costs (but not the costs of removal/installation), shall be borne by us if a defect is actually found to exist. However, if a demand on the part of the customer to rectify a defect is found to be unjustified, we shall be entitled to claim the corresponding costs from the customer if the customer has recognized or negligently not recognized that there is no defect.
 - 7.5. If rectification fails, or if a deadline established by the customer for rectification expires without result, or is not required under the legal regulations, the customer may withdraw from the contract of sale or reduce the purchase price. The presence of a minor defect shall, however, not give rise to any right to withdraw. Claims by the customer for loss and damage and/or for wasted expenses incurred exist only to the extent defined in Clause 10, and are otherwise excluded.
8. **Terms of payment**
 - 8.1. Unless otherwise agreed, our invoices for goods delivered carriage and expenses paid are to be settled strictly net and in cash within 30 days of being issued (invoice date). Invoices for pro-rated tooling costs are to be settled strictly net and in cash after the sample has been approved, within no more than 30 days of the invoice being issued and the sample being approved. The customer shall be considered to be in arrears if he fails to settle by this date.
 - 8.2. If the customer falls into arrears with payments, we shall be entitled to claim interest on overdue accounts at the legally-established annual rate of nine (9) percentage points above current base rate, and to make further claims for loss and damage in this respect. If the customer fails to settle the purchase price by its due date, but is not yet formally in arrears, we shall be entitled to claim interest on overdue accounts at the legally-established rate of two (2) percentage points above current base rate, subject however to a minimum annual rate of 5%.
 - 8.3. We shall only accept payment by bill of exchange subject to special agreement, and even then only if such bills of exchange are duly taxed and suitable for discounting. The customer shall be liable for all the costs arising from bills of exchange and discounting. Cheques and bills of exchange can only be accepted on account.
 - 8.4. If after conclusion of a contract it becomes noticeable (e.g. due to a request for opening of the insolvency procedure) that our claim to the purchase price should be at risk as a result of the customer's lack of ability to pay, then according to the statutory regulations we are entitled to refuse service and – if applicable, after setting a deadline – to cancel the contract (§ 321 of the German Civil Code (BGB)). In the case of contracts for the manufacture of non-fungible goods (custom-made products) we can withdraw immediately. The legal provisions concerning the dispensability of the imposition of a deadline remain unaffected. We shall also be entitled to prohibit the resale of goods to which we hold full or shared title, and to demand that such goods be returned to us, or that we be granted shared possession of such goods at the customer's expense.
 - 8.5. The customer's right to retain or offset payment shall only exist to the extent that such counterclaims are uncontested or enforceable in law. We also reserve the right to offset in those cases where mutual claims are in different currencies. The exchange rate

shall be defined as the officially-established average rate on the Frankfurt (Germany) foreign-exchange market that is in force on the day on which the offset is applied.

9. Reservation of title

- 9.1. We shall retain title to all goods delivered by us until all our claims arising from the commercial relationship with the customer, including any and all future claims arising from agreements entered into subsequently, and including any and all recourse or indemnification claims arising from bills of exchange and cheques have been settled in full in our favour. This shall also apply to an account balance in our favour, if any or all of our claims are listed in an open account and a balance is drawn.
 - 9.2. The customer undertakes to provide adequate insurance for goods subject to retention of title, with particular reference, but not limited to, fire and theft. Any and all insurance claims for damage to goods subject to retention of title are hereby directly assigned to us in accordance with the value of the goods subject to retention of title.
 - 9.3. The handling and processing of items subject to retention of title shall be carried out for us as the manufacturer under the terms of article 950 of the German Civil Code (BGB), without any obligation on our part. If items that are not our property are processed or inextricably mixed with the items subject to retention of title, we shall acquire part-ownership of the resulting new product in proportion to the value of our item relative to the value of the other items that are processed or mixed with it. If our goods are combined with other movable items to form a unified whole considered to be a main item, the customer hereby transfers part-ownership of the item concerned in the exact same proportion. The item or items then subject to co-ownership shall be considered goods subject to retention of title. The customer shall be obliged at all times to supply us on demand with information regarding the current status of the items to which we hold title or co-ownership rights.
 - 9.4. The customer shall be entitled, in the normal course of business, to resell or otherwise dispose of the goods supplied. Other acts of disposal, including but not limited to their use as a lien or security, are not permitted. The right to resell or dispose of goods subject to retention of title, and/or to incorporate them into further processes, shall not apply if the customer fails to make payment or falls into arrears with his payments.
 - 9.5. The customer hereby assigns to us, up to the invoiced amount owed to us, any and all claims owing to the customer against the end-user or third parties, including securities and collateral rights, arising from or in connection with the resale, disposal and/or further processing, by the customer, of the goods subject to retention of title. The customer must not enter into any agreement with its own customers that exclude or limit, in any way, our rights to make such claims, or which pre-emptively cancel such claims on our part. In the event of items that are subject to retention of title and subject to co-ownership being resold or disposed, all claims corresponding to our share of that co-ownership are hereby directly assigned to us. If the business relationship between the customer and his end-customer is on an open account basis, this assignment of rights, shall also cover the recognised balance of that account and, in the event of insolvency on the part of the end-customer, the existing "effective" balance.
 - 9.6. The customer shall continue to be entitled to exercise its rights to collect payment claims assigned to us, without prejudice to our own rights to collect such claims. We undertake not to collect any payments claims for as long as the customer remains up to date with his agreed payment commitments, does not fall into arrears with payments and, in particular, does not become the subject of insolvency proceedings or suspension of payments. However, if this does occur, we may demand that the customer supplies us with information and documents, including those relating to his own debtors, required for us to be able to collect such assigned claims. The customer shall be obliged, at our request, immediately to inform his own customers of the assignment of claims to us – unless we ourselves do so – and to supply us with the information and documents required for collection.
 - 9.7. If the customer has outstanding claims arising from the resale of goods, supplied by us, to a third party or parties, which are subject in particular but not limited to direct or indirect factoring, or any other arrangement that might affect our present or future rights to secure settlement of payments under the terms of clause 9 of this document, the customer must notify us accordingly and without delay. In the event of indirect factoring, we shall be entitled to withdraw from the agreement and demand the return of goods already delivered. The same shall apply in the event of direct factoring, if, after entering into the agreement with the factor, the customer no longer has at its disposal the full amount of the purchase price.
 - 9.8. In the event of contractual infringement or culpable negligence on the part of the customer, with particular reference but not limited to delayed payment, we shall – after expiry without result of a reasonable deadline extension granted by us – be entitled to withdraw from the agreement and demand the return of all goods subject to retention of title. This shall not affect the legal provisions regarding the absence of obligation to grant a deadline extension. We shall also be entitled to withdraw from the agreement if insolvency proceedings affecting the customer's assets are initiated. We shall be entitled to visit the customer's premises at any time during normal business hours in order to ascertain the status of goods supplied by us. The customer hereby authorises us to dispose of returned goods as we best consider fit, or if such disposal is not possible within a reasonable period, to scrap the items concerned and offset the proceeds, minus the costs incurred, against the customer's liabilities owed to us. The customer must notify us immediately and in writing of any and all third-party access to goods that are subject to retention of title or to payment claims that have been assigned to us.
 - 9.9. If the value of existing securities exceeds the value of our secured claims, as defined above, by more than 20%, we undertake to release securities, selected at our discretion, if asked to do so by the customer.
 - 9.10. If the above agreements regarding securities are ineffective or unenforceable under the legislation of the territory in which the goods subject to retention of title are located, it is hereby agreed that an equivalent agreement supplying us with the required security, as permitted by the law of that territory, shall apply. The customer undertakes to carry out any and all action that might be required on his part to ensure that such rights are established and maintained.
- ### 10. Exclusion and limitation of other liability
- 10.1. We and our legal representatives or vicarious agents shall accept unlimited liability only for willful or gross negligence or for loss or damage resulting in death, personal injury or damage to health, which is attributable to such willful or gross negligence on our part or that of our legal representatives or vicarious agents. We shall likewise accept unlimited liability for the issue of warranties and guarantees if a defect covered by such warranties or guarantees triggers our liability. There is likewise no limit on the liability arising from hazardous circumstances, with particular reference to German product-liability law (*Produkthaftungsgesetz*). This does not affect any liability that might arise from the commercial user's recourse to the principles of article 478 I. of the German Civil Code (BGB).
 - 10.2. In the event of any other negligent infringement of material obligations (see section 10.7 for cardinal obligations), our liability shall be limited to the foreseeable incidents considered typical for an agreement of this type.
 - 10.3. All further liability on our part – on whatever legal grounds (including but not limited to claims arising from the infringement of principle and subsidiary contractual obligations, malpractice and other tort liability) – is hereby excluded.
 - 10.4. The same exclusions, limitations and their corresponding exceptions shall apply to all claims arising from fault in conclusion of the contract (*culpa in contrahendo*).
 - 10.5. This section [section 10] shall apply accordingly in the event of reimbursement of costs, subject to the exceptions described in article 439, section 2, 435, subsection 2 of the German Civil Code (BGB).
 - 10.6. The exclusions and limitations affecting our liability shall also apply to our legal representatives and vicarious agents.
 - 10.7. Cardinal or material obligations are defined as those that characterise the agreement, and on which the contracting partner can rely. They cover the key rights and duties required to ensure fulfilment of the stipulations of the contract, and are vital to the achievement of its purpose.
 - 10.8. None of the above clauses are intended to modify legal or case-law-based burden of proof.
- ### 11. Expiry
- 11.1. In contrast to article 438, section 1, subsection 3 of the German Civil Code (BGB), claims arising from material and legal defects expire one year after delivery.
 - 11.2. However, if the item is employed in the normal way as part of a building structure, and its use results in a material defect, the law establishes that the warranty shall expire five years after delivery. This does not affect the special legal provisions concerning third-party in rem claims [article 438, section 1, subsection 1 of the German Civil Code (BGB)], misrepresentation [article 438, section 3, BGB] or supplier's claims arising from delivery to the end-user [article 479, BGB].
 - 11.3. The above sales law time limits shall also apply to contractual and non-contractual claims for loss or damage on the part of the customer arising from a defect in the goods, unless application of the normal legal time-limit [articles 195 and 199 BGB] leads, in individual cases, to the observance of a shorter period. The time limits established by German product-liability law (*Produkthaftungsgesetz*) shall in any case remain unaffected. Customer claims for loss and damage shall be subject in all other respects to the legally-established time limits described in section 9.
 - 11.4. None of the above clauses are intended to modify legal or case-law-based burden of proof.
- ### 12. Copyrights/Drawings and other documents
- 12.1. We shall retain the intellectual property rights to any and all drawings, drafts and other documents that we provide to the customer in the course of initiating or executing the agreement. These items must not be copied or otherwise made accessible to any third party or parties, or used for any purpose other than that for which they were supplied, without our express written permission. We shall be entitled to demand the cost-free return of the aforementioned documents, including any and all copies that might be made of them, if the customer no longer required these documents, or if we became aware of them being misused in any way. All rights of retention on the part of the customer in this respect are hereby excluded.
 - 12.2. The customer shall assume legal liability for ensuring that the use of the drawings, samples and/or models supplied does not infringe third-party rights in any way. If a third party invokes copyright to prevent us in particular from manufacturing and supplying the items concerned, we shall be entitled to cease all related activity – without any obligation to check the legal validity of the claim – and to seek compensation from the customer for any loss and damage incurred. The customer shall furthermore indemnify us from all claims asserted against us in this respect, in particular but not limited to third-party claims for loss and damage.
- ### 13. Further orders/Provision of inserts
- 13.1. If the customer engages us to manufacture components or goods in accordance with its specifications; or places an order to rubberise, carry out repairs to, or otherwise process items supplied by the customer, all the provisions of these General Terms and Conditions of Sale and Delivery shall apply accordingly, unless otherwise specifically agreed.
 - 13.2. Unless otherwise agreed, components required to complete the order, including but not limited to such items as metal parts, roller cores, etc. must be supplied by the customer in accordance with the applicable terms of delivery, in a timely manner, in the defect-free quality required and in the amount specified. If the agreed delivery is late or not of the required quality, we shall be entitled, at our discretion, to refuse to commence the fabrication process or suspend an ongoing fabrication process. The additional costs arising in this respect shall be borne by the customer. Any necessary repairs to roller-cores that are carried out at customer's instruction shall be invoiced separately. A reasonable shrinkage margin (scrap percentage) is to be taken into account when supplying inserts for the manufacture of moulded-rubber articles.
 - 13.3. Costs for the necessary testing of trial components shall be invoiced separately from any other costs that may arise, most notably for moulds and tools. If, for production purposes, we should manufacture or procure moulds, tools and/or other devices or items of equipment, the relevant costs shall be invoiced as part of the items produced. We shall retain ownership of the aforementioned items in order to deliver our design and engineering services.
 - 13.4. We shall not be obliged to insure models or components made available to us which are stored at our production works or on our premises on behalf of the customer. Models will be stored for a fixed number of years free of charge counted from their most-recent use.
- ### 14. Place of performance/Court of jurisdiction/Applicable law
- 14.1. The place of performance for all contractual obligations shall be our registered place of business. The sole court of jurisdiction for all disputes, including those involving the processing of bills of exchange and cheques, shall be the court that holds jurisdiction over our registered place of business. We shall, however, also be entitled to bring claims against the customer at his registered place of business.
 - 14.2. All legal and contractual relations between the customer and us shall be governed exclusively by the laws of the Federal Republic of Germany. The application of the uniform laws on the international sale of goods, most notably the uniform laws on the international sale of movable goods and on the conclusion of such sale agreements (the Hague Conventions) and the United Nations Convention on Contracts for the International Sale of Goods is hereby excluded.
- ### 15. Partial invalidity
- 15.1. In the event that individual provisions within this agreement should be or become invalid, this shall have no effect on the remaining provisions or covenants.