

General sales and delivery conditions of Wenker GmbH & Co. KG
Boschstraße 14, 48683 Ahaus, Germany

I. Scope, information, general

1. Entrepreneur customers

Customers within the meaning of these General Terms and Conditions of Sales and Delivery (AVB) are entrepreneurs.

2. Exclusivity

These General Terms and Conditions of Sale and Delivery apply between us and our customers exclusively. Differing, conflicting or supplementary generals

The customer's terms and conditions only become part of the contract if and to the extent that we have expressly agreed to their validity. This consent requirement applies to everyone

Case, for example, even if we deliver to the customer despite being aware of the customer's terms and conditions carry out without reservation.

3. Definition

Entrepreneur within the meaning of these General Terms and Conditions is any natural or legal entity in accordance with Section 14 of the German Civil Code (BGB).

Person or a legal partnership (e.g. stock corporation, GmbH) that is at

Concluding a legal transaction in the exercise of your commercial or self-employed role professional activity. A partnership with legal capacity is one

Partnership endowed with the ability to acquire rights and to enter liabilities.

4. Framework agreement

These General Terms and Conditions apply in the version valid at the time of the customer's order

Framework agreement also for similar future contracts, without us having to do so in each individual case again from they would have to point out.

5. Individual agreement

Individual agreements made with the customer in individual cases, including

Subsidiary agreements, additions and changes always take precedence over these General Terms and Conditions.

The content of such agreements is subject to proof to the contrary written contract or written order confirmation is decisive.

6. HGB

Commercial law regulations apply.

II. Conclusion of contract, cost estimate, payment

1. Offer, cost estimate

Upon request from the customer, we will arrange an appointment with the customer - also on site.

Planning the individual order. No contract has yet been concluded.

Illustrations contained in our brochures, advertisements, and other offer documents,

Information or drawings are only approximately authoritative insofar as those contained therein.

Information has not been expressly designated as binding by us.

2. Conclusion of contract, content

We consider ourselves bound to a cost estimate prepared by us for 14 days. For the

It is sufficient to conclude a contract if the customer does so in the form of the cost estimate accepts the offer made.

Unless the customer orders the suggested order as set out in the cost estimate

is granted, we are free to charge a reasonable and customary fee for the creation of the to collect a cost estimate. However, this fee will be charged before the creation of the Cost estimate coordinated with the customer.

Otherwise, orders are only deemed to have been accepted by us when corresponding orders have been placed by the

customers have been confirmed by us in writing or by fax.

We reserve the right to make technical improvements and improvements resulting from further development to make design changes if these are due to legal regulations, official requirements or according to the state of the art to achieve the purpose of the contract should be necessary or this neither affects the agreed quality nor the

The suitability of the delivery item for the contractually stipulated use is impaired becomes. If these occur during the acceptance period of an offer made by us,

The contract is also deemed to have been fulfilled by us if we use the product in the technically modified form provide form. We are not obliged to make any design or technical changes

Make improvements to products that have already been delivered if they have already been products delivered are not defective.

3. Due date, default

Our (partial) invoices are due within 14 days of receipt without any deductions.

Late payment occurs no later than 30 days after receipt of the invoice. The

Timely payment is only possible if the invoice amount is paid within this period one of our business accounts has been received for its final free disposal.

As of default, the outstanding claim will be 9 percentage points above the respective base interest rate interest paid. If a higher interest rate is proven by using bank loans etc.,

However, we are entitled to claim the higher interest rate.

All of our claims – including deferrals – become due immediately as soon as the customer receives them defaults on the fulfillment of other obligations towards us, stops making payments,

is over-indebted, has applied for or opened insolvency proceedings over his assets or

Opening is rejected due to lack of funds or facts become known to us that

The customer's creditworthiness is crucially questioned, so that our claim to payment

appears at risk. We are then entitled, at our discretion, to return the delivered goods

to reclaim further deliveries and services of advance payments or

to make security payments dependent or to withdraw from the contract. We are next to it

entitled to cancel any discounts, special benefits, etc. granted.

III. Rights to offer/contract documents

Drawings, illustrations, calculations, technical documents and other descriptions,

created by us remains our property and we remain the owner of the usage and exploitation rights.

You may only provide them to third parties in conjunction with our consent

knowledge will be given. We also reserve all proprietary rights and

copyright usage rights to all drawings and company documents.

IV. Offsetting, right of retention

The customer is only entitled to set off against our claims if his claims

have been legally established, we have recognized them or the claims are undisputed.

As a customer, the entrepreneur is only authorized to exercise a right of retention to the extent that than the counterclaim is based on the same contractual relationship.

V. Prices, payment terms

1. Price definition

The prices we provide are exclusive of delivery (within Germany).

the applicable VAT, currently 19%, ex warehouse in euros without assembly, if this is not the case agreed separately.

Any packaging will be charged separately and will not be taken back unless this is agreed upon

Packaging Ordinance or other legal regulations are required.

2. Price adjustment

If there are more than four months between the conclusion of the contract and delivery or provision of services

and if there is no delay for which we are responsible, we are entitled to charge the agreed prices to compensate for cost increases. These increases may be due in particular to:

of increased labor costs or changes in material prices. The cost increases

we will as soon as and to the extent that they have occurred and we will adjust the price accordingly demand and provide proof to the customer upon request.

If there are price deviations of more than 10%, the customer is entitled to do so within a period of 10 days from the announcement of the price change of the contract, if it has not yet been fulfilled, to resign. The new prices are then considered approved.

3. Insurance before transfer of ownership

Until ownership is transferred, the customer is obliged to adequately insure the goods against breakage, fire, water and other damage as well as theft. Claims to such

Insurance benefits are assigned to us by the customer upon conclusion of the contract. We accept the assignment.

Claims against subsequent purchasers

The customer may neither assign his claims against subsequent purchasers to third parties pledge, nor agree on a prohibition of assignment with subsequent purchasers.

VI. Delivery, transfer of risk, non-fulfillment

1. Location

Delivery generally takes place from our warehouses.

2. Delays

The respective customer is obliged to inform immediately in writing if circumstances arise or become apparent to him, which shows that the agreed dates and deadlines cannot be adhered to.

If the customer does not accept the goods at the agreed time, we are responsible entitled to set a reasonable acceptance deadline. After this period has expired, we are entitled to to withdraw from the contract and claim any damage incurred.

Unless a fixed delivery date has been expressly agreed and confirmed by us in writing delivery times are not binding.

If the delivery date has been exceeded, the customer is required to notify us in writing, setting a deadline to encourage our performance. If we let this grace period pass fruitlessly, the customer is entitled to withdraw from the purchase contract.

The customer must fulfill his contractual cooperation obligations and obligations to us the proper fulfillment of the contract, in particular compliance with delivery times and

To enable delivery dates. The delivery times begin with ours at the earliest

Order confirmation, but not before the documents to be obtained from the customer have been provided, information, approvals or other acts of cooperation necessary for delivery

Customers and not before receipt of an agreed deposit. The delivery dates are postponed according to the times of default by the customer.

If the dispatch or delivery of the delivery item is delayed at the customer's request or postponed, then - starting from the first month after the display of the

Readiness for dispatch – a flat-rate storage fee of 1% of the order value for
The customer will be charged for each month of the delay, up to a maximum of
Amount of 5% of the order value, unless higher costs were incurred and
be detected. For partial deliveries, the order value of the partial delivery is decisive.

3. Transfer of risk

The risk of accidental loss and deterioration of the goods expires at the latest
Handover to the customer. There is a risk of accidental loss when purchasing by mail order
and the accidental deterioration as soon as the goods are delivered to the person responsible for the
execution

Shipping to a specific person (e.g. freight forwarder).

The risk passes to the customer from the day the goods are ready for dispatch if the dispatch takes
place

delayed due to circumstances for which we are not responsible. This also applies to permitted ones
Partial deliveries and agreements on other services such as freight-free delivery.

4. Compensation for damages due to non-performance

We can claim 25% of the order price as compensation for non-fulfillment of the purchase contract
without deductions unless the customer proves that there was no damage at all or
was not incurred in the amount of the flat rate. For the rest, we'll stay with you
Custom-made products reserve the right to claim higher, proven damages.

VII. Force Majeure

Events of force majeure, e.g. mobilization, war, riots, corona, pandemics, entitle
us, the delivery for the duration of the hindrance plus a reasonable start-up time
to postpone. Force majeure includes strikes, lockouts or unforeseeable,
unavoidable circumstances, e.g. operational disruptions through no fault of our own, or transport
delays

or interruptions, shortages of raw materials or energy through no fault of our own, no matter what
the

make timely delivery impossible despite reasonable efforts. This also applies if the aforementioned
hindrances during a delay or with a subcontractor enter.

We are liable for delays in performance in cases of intent or gross negligence
on our part or a representative or vicarious agent as well as in the case of slight negligence
caused injury to life, body or health in accordance with the law regulations.

VIII. Liability

1. quality guarantee

We shall also be liable within the scope of a quality and/or durability guarantee, provided that we
have given such a

guarantee with regard to the delivered item. If damage occurs which is based on the fact that
that the quality or durability guaranteed by us is lacking, and this damage does not occur
and this damage does not occur directly to the goods delivered by us, we shall only be liable for this
goods supplied by us, we shall only be liable for such damage if the risk of such damage is clearly
covered by our
and durability guarantee.

2. compensation for damages in case of fault

We shall be liable for damages - irrespective of the legal grounds - within the scope of the
liability for intent and gross negligence. In case of simple negligence we are liable
subject to legal limitations of liability (e.g. care in own affairs;
insignificant breach of duty), only

a) for damages resulting from injury to life, body or health,

b) for damages resulting from the breach of an essential contractual obligation (obligation, whose

(obligation, the fulfillment of which makes the proper execution of the contract possible in the first place and on the observance of which the contractual partner regularly relies and may rely); in this case our case, however, our liability shall be limited to compensation for the foreseeable, typically occurring damage and to a maximum of 5 million euros.

The resulting limitations of liability shall also apply to third parties as well as in the case of breaches of duty by persons (also in their favor) whose fault we are responsible for according to the statutory provisions. They shall not apply insofar as a defect has been maliciously or a guarantee for the quality of the goods was assumed and for claims of the buyer according to the claims of the buyer under the Product Liability Act.

3. liability in tort, culpa in contrahendo, ...

Any further liability for damages is excluded. This applies in particular to claims for damages arising from culpa in contrahendo, other breaches of duty or other breaches of duty or tortious claims for compensation for property damage in accordance with § 823BGB.

4. inclusive limitation

Insofar as liability for damages against us is excluded or limited, this shall apply also with regard to the personal liability for damages of our organs, employees, representatives and vicarious agents, employees, representatives, and vicarious agents.

IX. Delay and defects

1. obligation to give notice of defects

The customer shall inspect and counter-read our services and deliveries before passing them on and shall

and to observe the legal and technical requirements, in particular the DIN and VDE guidelines. and VDE guidelines.

The customer is responsible for immediately notifying us in writing of any obvious defects. If no timely notice of defect, the delivery item shall be deemed to have been approved in view of the defect. § 377 para. 5

HGB remains unaffected. In all other respects, the statutory provisions shall apply.

2. liability for delay

In cases of delay, with the exception of force majeure, our liability for damages in addition to performance shall be limited to a total of 5 % and for damages in lieu of performance (including the reimbursement of futile expenses) to a total of 5% of the value of the delivery.

value of the delivery. Further claims of the customer are excluded - even after the expiry of a deadline period set for us to perform - shall be excluded.

3. data verification

If the customer sends us data and processing records, we are not obliged to check the content of the data and processing records.

to check the content of the data and processing records. The data and processing records are merely entered by us as part of the production process.

X. Warranty

1. product changes

Product modifications to the delivery item that do not involve significant changes, are not required to are not necessary to achieve the purpose of the contract and/or do not affect the agreed quality agreed quality or affect the suitability of the delivery item for the contractually use and do not involve any technical deterioration, shall not constitute a defect.

do not constitute a defect.

2 Software updates

We are not obligated to update or subsequently deliver software after the purchase of electronic devices electronic devices, unless this has been assured by us in an individual contract. was. The customer expressly agrees to this.

3. subsequent performance

If there is a defect in the delivery item for which we are responsible, we shall be entitled at our choice to remedy the defect or to make a replacement delivery. If the subsequent performance fails more than more than twice, the customer shall be entitled, at his discretion, to withdraw from the contract or to demand a to demand a reduction in price.

4. improper use

A warranty does not apply if delivered items and things are damaged by improper use or in the event of wear and tear or in the event of transport damage for which we are not responsible. damage in transit for which we are not responsible. The same shall apply in the event of improper installation of components by the customer or a third party commissioned by him. The same applies to defective components.

5. incorrect planning

We do not assume any liability for incorrect planning, design errors and incorrect dimensions of the customer or a third party commissioned by the customer. customer or a third party commissioned by the customer and in this respect are not subject to any obligation to inspect.

6. Improper modification

If the customer or a third party makes improper changes to the delivered item, the customer and the third party and the consequences thereof shall likewise not be covered by the warranty. warranty claims.

7. right of retention in case of defects

In the event of justified notices of defect, payments by the customer may be withheld up to three times the value of the value of the costs of remedying the defect. If the notice of defect was unjustified, we shall be shall be entitled to demand reimbursement of the expenses incurred by us from the customer.

8. limitation period

The period of limitation for warranty claims shall be - except in the cases of § 438 para. 1 No. 2 point b. BGB - one year from delivery of the delivery item. The limitation period in the case of of a delivery recourse according to §§ 445a f BGB remains unaffected. The warranty period for services under a contract for work and services shall be one year after acceptance. Statutory limitation periods shall remain unaffected periods of limitation shall remain unaffected if we have fraudulently concealed the defect or on account of claims for damages due to culpable injury to body, health and life, or for other as well as for other intentional and grossly negligent breaches of duty by us, our legal legal representatives, employees and vicarious agents.

9. quality guarantee

A guarantee of quality must be expressly designated as such by us and agreed in writing.

XI. Special conditions for assembly services

1. hourly rates

Installation services by us shall be invoiced at the agreed hourly rates, otherwise at our otherwise according to our usual hourly rates, unless a lump sum price has been agreed.

2. billing

Invoicing according to expenditure shall be carried out at the end of each month, enclosing the corresponding hourly overviews.

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3. duty to cooperate

The customer shall be obligated to provide the agreed and necessary cooperation and means of support necessary for our performance in a timely and complete manner. and in full in good time. This includes the completion of unhindered access to and movement around the installation site, coordination with other trades and with other trades and suppliers, provision of technical infrastructure (e.g., connections, power (e.g., connections, electricity, water, etc.) and auxiliary materials, if necessary, provision of the items. The customer shall ensure that our services can be carried out without any delays. can be carried out without delays. We shall be entitled to claim any expenses and and costs, in particular waiting, accommodation, and travel costs, for which the customer is responsible. delays for which the customer is responsible.

4. subcontractor

We are entitled, without the separate consent of the customer, to have installation services performed by a subcontractor as our vicarious agent.

5 Acceptance

The customer accepts the work performance when we have notified its completion and any agreed testing of the delivery item has been carried out. agreed testing of the delivery item has been carried out. The services shall also be accepted if the customer uses our services or the assembled delivery item. delivery item. § Section 640 (1) sentence 2 of the German Civil Code (BGB) shall remain unaffected.

XII. Statute of Limitations

The period of limitation for claims and rights due to defects in the deliveries - irrespective of the legal basis - is 1 year, in the case of used goods and replacement parts 6 months from delivery. delivery. If acceptance has been agreed, the limitation period shall commence upon acceptance. If the goods are a building or an object which is used for a building in accordance with its customary used for a building and which has caused the defectiveness thereof (building material), the (Building material), the period of limitation shall be 5 years from delivery in accordance with the statutory provisions. delivery (§ 438 para. 1 no. 2 BGB). This shall also not affect further statutory. special provisions on the statute of limitations (§ 438 para. 1 no. 1, para. 3, §§ 444, 445b BGB). The limitation periods of the law on sales shall also apply to contractual and and non-contractual claims for damages of the customer based on a defect of the goods, unless the

defect of the goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in individual cases.

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delivery (§ 438 para. 1 no. 2 BGB). This shall also not affect further statutory.

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and non-contractual claims for damages of the customer based on a defect of the goods, unless the defect of the goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in individual cases.

XIII Retention of title

1. claims

We reserve the right of ownership until full payment of all our present and future from the purchase contract and an ongoing business relationship (secured claims). claims) we retain title to the goods sold.

2. insurance

As long as the ownership has not yet been transferred to the customer, the latter shall treat the delivered

the delivered goods with care, in particular he shall be obliged to insure them at his own expense against

against fire, water and theft at their replacement value. We are to be

immediately if the delivered items are seized or exposed to other interventions by third

interventions by third parties. The customer shall notify us in writing without delay

if an application for the opening of insolvency proceedings has been filed or if third parties have seized (e.g. seizure) of the goods belonging to us.

3. behavior contrary to the contract

In the event of conduct by the customer in breach of contract, in particular default in payment, we shall be entitled to

to take back the object of sale. The taking back of the goods shall not constitute a rescission of the contract unless we have expressly declared this in writing beforehand. We shall be

entitled to to utilize the item subject to retention of title. The proceeds of the sale shall be credited to the customer's liabilities after deduction of the costs.

against his liabilities after deduction of the costs. Any surplus shall be paid out.

4. assignment of receivables

In order to secure our rights pursuant to lit. 1, the customer hereby assigns to us all claims in the amount of the

amount (including value added tax) of our claim, which accrue to him from a resale against his customers or third

resale against his customers or third parties, irrespective of whether the purchased goods have been whether the object of sale has been resold without or after processing. The customer shall remain entitled to collect this

customer shall remain authorized to collect this claim even after the assignment. Our authority to collect the claim ourselves shall remain unaffected. However, we undertake not to collect the claim as long as the customer fulfills his payment obligations from the collected proceeds, does not file insolvency proceedings, is not in default of payment, no application for insolvency proceedings has been filed or payments have been suspended. However, if this is the case, we may demand that the customer informs us of the assigned claims and their debtors, provides us with all the information necessary for collection, to hand over the relevant documents and to inform the debtors (third parties) of the assignment. (third parties) of the assignment.

5. mixing, combination

If our ownership of the goods subject to retention of title expires as a result of mixing or combination with other items (§§ 947, 948 BGB), the customer's ownership or co-ownership rights to the mixed stock or co-ownership rights of the customer to the mixed stock or the uniform object in the proportion of the ratio of the final invoice amount of the reserved goods to the total of the sum of the final invoice amounts of the other mixed or combined items. In this case, the customer's expectant right to the objects shall continue in the transformed thing. If the mixing is carried out in such a way that the customer's item is to be regarded as the main item, it is the customer's item is to be regarded as the main item, it shall be deemed to have been agreed that the customer shall transfer to us pro rata co-ownership and the resulting sole ownership or co-ownership on our behalf.

6. claims from resale

The customer is entitled to resell the reserved goods in the ordinary course of business transactions. The customer hereby assigns to us the claims arising from the resale of the goods subject to retention of title. We accept the assignment. This assignment shall apply irrespective of whether the items have been resold without or after processing. The customer remains entitled to collect the claim even after the assignment. The authority of us to collect the claim ourselves remains unaffected by this. However, we will not collect the claim as long as the customer fulfills his payment obligations to us, is not in default of payment and, in particular, has not filed for insolvency proceedings or payments have been suspended.

7. interventions in the reserved property

In the event of seizures and other interventions by third parties in the reserved property, the customer shall notify us immediately in order to be able to file a third-party action. Insofar as the third party is not in a position to reimburse us for the judicial or extra-judicial costs of such an action, the customer shall be liable for the loss incurred by us.

8. security release

We undertake to release the securities to which we are entitled at the request of the customer to the extent that the realizable value of our securities exceeds the claims to be secured by more than 10 %; the choice of the securities to be released shall be incumbent upon us.

XIV. Place of Jurisdiction, Applicable Law, Dispute Resolution

The place of jurisdiction is the registered office of our company. However, we expressly reserve the right to customer at any other permissible place of jurisdiction. Place of performance is, insofar as

agreed otherwise, shall be the registered office of our company, in the case of assembly services, regarding all rights and obligations arising from the contract concluded with us, German law shall apply.

German law shall apply. The UN Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.

XV. Severability Clause

Should any provision of this agreement be invalid in whole or in part, or should it lose its legal validity later, the validity of the remaining provisions shall not be affected.

shall not be affected. In place of the invalid provision, the statutory provisions shall apply.

(Status 08/2023)