



General Terms and Conditions of Sale and Delivery of IWAKI Europe GmbH, 47877 Willich

1. Application of the terms and conditions

(1) These Terms and Conditions of Sale apply to business entities as per § 14 German Civil Code (BGB) only. They also govern all future transactions with the buyer. They apply accordingly for contracts for work and labour and for contracts for work and materials and other contracts.
 (2) Our Terms and Conditions of Sale apply exclusively. We do not acknowledge any conditions of the buyer that conflict with or deviate from our Terms and Conditions of Sale, even if we perform the contract without expressing any reservations.
 (3) All agreements made between us and the buyer for the purpose of performing this contract must be documented in writing in this contract or in an amending contract. Any cancellation or modification applies only to the relevant contract concluded. Our employees are not entitled to conclude supplementary agreements or to give warranties.
 (4) Unless otherwise stipulated in these Terms and Conditions of Sale, the terms and definitions of the INCOTERMS 2010 apply.

2. Conclusion of contract

(1) Our quotations are without obligation. Likewise, technical descriptions and other details contained in offers, brochures and other sources of information initially have no binding effect. Our sales persons and agents have no power of attorney to conclude contracts on our behalf.
 (2) We reserve all title and copyright to illustrations, drawings, calculations and other documents. They may not be made accessible to third parties.
 (3) The order of goods by the buyer is considered to be a binding contract offer. Unless otherwise arises from the order, we have the right to accept this contract offer within 12 days of its receipt. Orders shall be deemed accepted only if confirmed by us in writing.
 (4) Descriptions and details as per clause 2 (1) above as well as public statements made by us, by other manufacturers and their employees and agents (§ 434 (1) 3 Civil Code (BGB)), become an integral part of the description of services only if express reference is made to the same in this contract.

3. Prices and terms of payment

(1) Unless otherwise is stated, our prices are "DDP" or "DAP". The cost of delivery abroad and special packaging will be charged. Any additional expenses, for example for taking out insurance, will come by the buyer.
 (2) The statutory VAT for deliveries within the Federal Republic of Germany is not included in our prices; for deliveries within the Federal Republic of Germany it will be shown separately in the invoice at the statutory amount on the date of the invoice.
 (3) All invoices are due and payable as specified in the contract offer and / or order confirmation and payment is to be made in cash or by transfer. They are deemed to have been paid with effect from the date on which the amount is at our free disposal. Our sales persons and agents are not entitled to collect monies for us.
 (4) Other forms of payment (e.g. bills of exchange and cheques) require a separate written agreement.

(5) The buyer pays the costs incurred by both parties for such forms of payment.
 (6) The buyer may exercise a right of withholding or set-off only with regard to receivables or claims of the buyer that are undisputed or have final and legally binding effect. In the event of any defects in the delivery, the counter-claims of the buyer as defined in no. 7 para. 6 clause 2 of these terms and conditions of sale and delivery will remain unaffected.

(7) If there is a change in the costs incurred by us for delivery during a period of four months between our quotation or confirming the order until delivery, e.g. as a result of the subsequent introduction of - or an increase in - duties, taxes or other charges imposed on the goods, including but not limited to EU duties and anti-dumping duties or countervailing duties or similar or in the event of a change in currency parities, we are entitled to adapt the price offered or agreed accordingly.

4. Delivery and duties of cooperation

(1) The scope of our delivery obligations is shown exclusively in this contract. We reserve the right to make changes in design, shape and/or colour resulting from an improvement in the technology or from legislative requirements, provided that the changes are not major or otherwise unreasonable for the buyer.
 (2) If the buyer can reasonably be expected to accept part deliveries, these may be made and invoiced.

(3) Delivery deadlines are only binding if they are agreed in writing. Delivery deadlines will be agreed individually or specified by upon receipt of the order. The indication of delivery periods is subject to the contractually agreed cooperation of the buyer. A prerequisite for adherence to our delivery obligation is the prompt and proper performance of the buyer's obligations. If the buyer subsequently requests modifications or fails to furnish documents to be furnished by the buyer (e.g. approvals and releases to be procured), the delivery period will be extended accordingly. The delivery period is deemed to have been met if the goods for delivery are ready for delivery within the agreed period and we have notified the buyer of this fact.
 (4) If we fail to receive deliveries from our own suppliers, although we placed matching orders simultaneously with reliable suppliers, we are released from our obligation to deliver and can rescind the contract.
 (5) If, after the contract has been concluded, it should emerge that the buyer does not provide sufficient guarantee for its ability to pay and our payment claim is at risk due for example to insolvency proceedings having been opened, or if the buyer has broken the law or any recognised compliance rules, we will have the right to refuse delivery until the buyer makes the payment or has provided security for it. If the payment is not made or the security is not provided within 12 working days of request, we will have the right to withdraw from the contract. With contracts concerning the manufacture of non-fungibles (one-off productions), we can declare withdrawal immediately; the statutory regulations with regard to any setting of a deadline being unnecessary remain unaffected.
 (6) If the buyer is in default of acceptance, fails to cooperate or a delivery is delayed due to other reasons for which the buyer is responsible, we are entitled to demand compensation for the losses incurred due to this including additional expenditure (e.g. storage costs). We will charge a flat rate for this in the amount of the customary local storage costs, starting from the delivery deadline. The right to prove that the losses are higher and our statutory rights (in particular reimbursement of additional expenses, adequate compensation, terminate) remain unaffected; the flat rate will though be offset against further monetary claims. The buyer has the right to prove that we have incurred no losses or that the losses are of a significantly lower amount than the above flat rate.
 (7) In the event of the buyer cancelling the contract without cause, we are entitled to require 20% of the gross order value as liquidated damages (damages in lieu of performance). The same applies if the contract is not performed for reasons for which we are not responsible. The buyer has the right to prove that either no damages or lower damages were suffered.
 (8) Any customs duties, taxes and other public charges will be borne by the buyer. We do not take back transport packaging or any other packaging in accordance with the German Packaging Regulation (Verpackungsverordnung); the packaging becomes the property of the buyer. Pallets are an exception to this.

5. Delays in delivery

(1) If we are unable to adhere to the agreed delivery period as a result of circumstances beyond our control affecting us or our suppliers (e.g. natural disasters, war, unrest, sovereign intervention, energy shortage, labour disputes, etc.), this period is extended accordingly. We shall notify the buyer without delay in such a case. If the impeding circumstances last longer than one month after expiry of the agreed delivery period, either party may rescind the contract. More extensive claims based on our failure to deliver within the delivery period for reasons for which we are not responsible are excluded.
 (2) If the buyer suffers damages as a result of default in delivery, the buyer is entitled to claim 3% of the value of the delivery for each full week of default as liquidated default damages, however, a maximum of 10% of the value of the delivery. The buyer can also set us a reasonable subsequent date for delivery in writing which must be at least 15 working days. If this subsequent deadline passes without issue, the buyer is entitled to rescind the contract or claim damages in lieu of performance. Liability to compensate damages is limited to 50% of the damages suffered.
 (3) Clause 5. (2) does not apply if default is due to intent, gross negligence or breach of an essential duty. It also does not apply if a transaction for delivery by a fixed date was agreed.

6. Place of fulfilment and transfer of risk

The place of fulfilment is the named place of destination. Unless otherwise is stated in the order confirmation, delivery "DDP" or "DAP" is agreed. This applies independently of who pays the freight costs, even if delivery is made in individual parts. If the delivery is delayed for reasons for which the buyer is responsible, the risk passes at the time of notification that the goods are ready for delivery.

7. Material defects

(1) The statutory regulations apply for the rights of the buyer with liability for material defects and defects of title (including wrong and short delivery, incorrect assembly or faulty assembly instructions), unless otherwise is specified in the following. In all cases, the special statutory regulations for final delivery of the goods to a consumer remain unaffected (supplier regress as per §§ 478, 479 of the German Civil Code (BGB)).
 (2) Our liability for defects is based above all on the agreed properties of the goods. The agreed properties of the goods are considered to be those product descriptions referred to as such which have

been given to the buyer before it places its order or have been included in the contract in the same way as these general terms and conditions.

(3) If the properties have not been agreed, it is to be assessed in accordance with the statutory regulation whether there is a defect or not (§ 434 para. 1 clauses 2 and 3 of the BGB). We accept no responsibility though for public statements made by the manufacturer or other third party (e.g. advertising messages).

(4) For the buyer to be able to make claims for defects, it is necessary that it has met its statutory duties of inspection and notification (§§ 377, 381 of the German Commercial Code (HGB)). If a defect is revealed in the inspection or at a later time, we have to be notified in writing without delay. The notification will be deemed to have been made without delay if it is made within two weeks, whereby the deadline will be deemed to have been met if the notification has been sent in due time. Notwithstanding this duty of inspection and notification, the buyer has to notify obvious defects (including wrong and short delivery) in writing within two weeks of delivery, whereby the deadline will be deemed to have been met if the notification has been sent in due time. If the buyer fails to duly inspect the delivery and/or notify of defects, our liability for the defects that have not been notified is excluded.
 (5) If the delivered item has a defect, the buyer may in the first instance demand supplementary performance by way of rectification of the defect (rectification) or delivery of a defect-free item (replacement delivery) as it chooses. If the buyer does not declare which of the two rights it chooses, we may set the buyer a reasonable deadline to make this choice. If the buyer does not make its choice by the deadline, the right to choose will pass over to us when the deadline has passed.
 (6) We have the right to make the supplementary performance owed dependent upon whether the buyer pays the purchase price due. The buyer has the right though to retain an appropriate part of the purchase price which is in proportion to the defect.
 (7) The buyer has to give us the time required and opportunity to provide the supplementary performance owed, and in particular to hand over the goods which are the subject of the complaint for examination purposes. In the case of a replacement delivery the buyer has to return the defective item in accordance with the statutory regulations. Supplementary performance includes neither the removal of the defective item nor its reinstallation, if we were not originally required to perform the installation.
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 (9) In urgent cases, e.g. a risk to operational safety or in order to prevent disproportionately high costs, the buyer will have the right to rectify the defect itself and to demand compensation for the costs incurred from us. We are to be informed immediately, where possible in advance, of any such rectification by the buyer itself. The buyer will not have the right to rectify the goods itself if we would be justified in refusing any such supplementary performance in accordance with the statutory regulations.
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(86) We have the right to make the supplementary performance owed dependent upon whether the buyer pays the purchase price due. The buyer has the right though to retain an appropriate part of the purchase price which is in proportion to the defect.
 (87) The buyer has to give us the time required and opportunity to provide the supplementary performance owed, and in particular to hand over the goods which are the subject of the complaint for examination purposes. In the case of a replacement delivery the buyer has to return the defective item in accordance with the statutory regulations. Supplementary performance includes neither the removal of the defective item nor its reinstallation, if we were not originally required to perform the installation.
 (88) The necessary costs of examination and supplementary performance, in particular the costs of transport, labour and materials (not the costs of removal and installation), will be borne by ourselves, if a defect actually exists. If, however, a request for rectification of defects by the buyer turns out to be unjustified, we may demand that the costs incurred are compensated by the buyer.
 (89) In urgent cases, e.g. a risk to operational safety or in order to prevent disproportionately high costs, the buyer will have the right to rectify the defect itself and to demand compensation for the costs incurred from us. We are to be informed immediately, where possible in advance, of any such rectification by the buyer itself. The buyer will not have the right to rectify the goods itself if we would be justified in refusing any such supplementary performance in accordance with the statutory regulations.
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