

## Terms of Sale of the winkler Group (DE)

### 1. General

- (1) All deliveries shall be effected on the basis of the following terms and conditions of business. They shall apply to all contracts concluded by ourselves with our customers, which come into being either through the Internet (Online Shop) under consideration of the special provisions applicable in the present General Terms and Conditions of Business or in any other manner. They shall form the basis for all quotations and agreements and shall be determined to have been acknowledged with placement of an order or acceptance of delivery for the duration of the entire business relationship. Any diverging terms and conditions which have not been explicitly acknowledged in writing shall not be binding on ourselves as the Vendor, including where we have not made specific objection to same.
- (2) No verbal agreements have been concluded outside the present contract.
- (3) A "consumer" for the purposes of the following provisions shall be deemed to be a natural person within the meaning of § 13 German Civil Code who enters into a legal transaction for a purpose that is outside his trade, business or profession.
- (4) An "entrepreneur" within the meaning of § 14 German Civil Code shall be deemed to be a natural or legal person or a partnership with legal personality who or which, when entering into a legal transaction, acts in exercise of his or its trade, business or profession.
- (5) The provisions contained in the terms and conditions of business shall apply in relation to both consumers and entrepreneurs, except as specifically provided otherwise.

### 2. Quotation and Conclusion of Contract

- (1) The presentation of our goods on the Internet shall not constitute a binding quotation. No obligation according to § 145 German Civil Code shall come into being until the placement of an order by the Customer. In the event of acceptance by ourselves we shall send the Customer a confirmation of order either by e-mail, telefax or normal post.
- (2) This shall likewise apply to other orders and other forms of the presentation of goods, in particular involving general information relating to prices/goods, our catalogues, our advertising and in letters addressed to customers where and in so far as same are not explicitly designated by ourselves as constituting a binding quotation. Where no confirmation of order is issued in text form by ourselves in response to orders not placed via the Internet, the contract shall come into being at the latest with our delivery within the period of time allowed for acceptance.
- (3) The nature and scope of delivery shall depend on our confirmation of order. We shall be entitled to effect part performance to an extent that can be reasonably expected to be acceptable. Cost estimates shall only be binding where specifically designated by ourselves as binding. Where work becomes necessary, we reserve the right to exceed the cost estimate by up to 15% of the estimated contractual value without prior notification of the Customer.
- (4) Goods ordered via our website shall be delivered in the versions, dimensions, weights, colours and minimum quantities specified in our Online Shop. The information provided in our Online Shop shall constitute no guarantee, of whatever nature. We reserve the right to make changes during the delivery period for the purpose of technical progress or following amendment to statutory provisions where the subject of delivery does not undergo significant modification and such changes can be reasonably expected to be acceptable to the Customer. This shall likewise apply in the case of all other orders to information included on our website, in our catalogues and in our advertising.
- (5) We reserve the right to refrain from the confirmation of orders for goods where the ordered goods are no longer available at our company.

### 3. Prices – Terms of Payment

- (1) The prices stated in our Online Shop and for other orders in the confirmation of order (except as specifically stated otherwise therein) shall apply ex works. We reserve the right in the case of contracts with an agreed delivery time exceeding four months to adjust prices in line with any cost increases occurring in conjunction with collective bargaining agreements or rises in the prices of materials. Where the increase exceeds 5% of the agreed price, a right of termination shall accrue to the Customer.
- (2) Any shipment and packaging costs incurred shall depend on the mode of shipment selected by the Customer and shall be stated during online ordering, or in the case of other orders in the confirmation of order. We shall make a separate charge for such costs and shall indicate same separately. Delivery dates and delivery periods shall only have binding effect where confirmed by ourselves in writing.
- (3) Prices for spare parts shall only be credited where the replacement item corresponds to the part to be repaired and the original part is capable of being repaired.
- (4) The payment term is 30 days net after date of invoice.
- (5) If payment by direct debit is agreed, a direct debit notice period of at least 2 days shall be agreed, which shall be fulfilled by notification of collection on the invoice.
- (6) Where the Customer defaults on payment, we shall be entitled to charge interest on default amounting to 8% p.a. above the base interest rate. Where the Customer is a consumer within the meaning of § 13 German Civil Code, the statutory provisions shall apply. We reserve the right to assert a claim for further prejudice.
- (7) The Customer may only set off our claims where his counterclaim is undisputed or the title is recognised by declaratory judgement; he may only assert a right of retention where this is based on claims under the purchase contract.

### 4. Delivery

- (1) The agreed delivery period shall commence with dispatch of the confirmation of order by ourselves, however not before submission of the documents, permits and approvals to be procured by the Customer and receipt of any agreed down payment.

- (2) The delivery period shall be deemed to have been observed where we hand over the consignment to the party responsible for transport or same has left our plant for the purpose of shipment, and, where consumer goods are purchased, on handover or on an attempt at handover at a time when the Customer should expect handover.
- (3) All instances of force majeure and all events for which we are not responsible shall discharge us from fulfilment of the contractual obligations we have contracted for the duration of said events. We shall be obliged to immediately notify the Customer in writing where such an event comes about; at the same time we shall be required to inform the Customer of the probable duration of said event.
- (4) Where we are prevented due to a circumstance for which responsibility lies with ourselves or our agent from delivering the purchased item by the agreed date or within the agreed period (delay in delivery), we shall assume liability in accordance with the statutory provisions. Where responsibility for the delay in delivery does not lie with ourselves or our agent, we shall only incur liability for the foreseeable losses which typically occur. Where the delay in delivery merely derives from a breach of a contractual obligation of minor significance, the Purchaser may assert a flat-rate claim for delay in performance amounting to 0.5% of the delivery value per week of delay or part thereof, however for not more than 15% of the value of the consignment.
- (5) We shall be entitled to effect partial delivery, whereby same shall constitute an individual transaction.

### 5. Shipment

- (1) The transfer of risk shall take place on shipment of the item to the Purchaser where same is handed over to the party responsible for transport or has left our warehouse for the purpose of shipment. The foregoing provisions shall not apply where the Customer is a consumer within the meaning of § 13 German Civil Code. Where consumer goods are purchased, the risk shall pass to the Customer on handover.
- (2) Where no specific instructions are issued by the Customer, we shall determine the mode of shipment at our own discretion. We provide no guarantee in respect of the most inexpensive or safest mode of transport.
- (3) With the exception of consumer packagings within the meaning of the packaging regulations we shall not take back transport or other packagings except where otherwise agreed.
- (4) The Customer shall be obliged to inspect the goods on receipt for identifiable damage resulting from transport and to report any such damage to the forwarding agent on handover and to ask same to confirm the existence of said damage. A consignment shall be deemed to have been unconditionally accepted where the consignee or Customer fails to notify us of any claims within the period of time stated below in the course of delivery.
  - shipment via nighttime express delivery: by 12.00 noon on the day of delivery
  - delivery to domicile / daily delivery trip: 1 working day after receipt of goods
  - other modes of shipment: 6 working days after receipt of goods.

### 6. Right of Revocation

- (1) The Customer shall be entitled, where he places an order via our Online Shop and is a consumer within the meaning of § 13 German Civil Code, to revoke the contract concluded with ourselves within 14 days after receipt of goods without any need to state his grounds for doing so. Such revocation shall be effected in writing, in text form or by return of the goods. Further details about the right of revocation and the consequences of same are included on our website for the Online Shop with the information provided for customers.
- (2) Where a purchase order is annulled by the Customer according to para. (6.1.) without justification, we shall be entitled, notwithstanding the possibility of asserting a greater loss, to claim 10% of the purchase price to cover the costs incurred for processing the purchase order and for lost profit. Where we have already manufactured or procured the goods item according to the Customer's wishes on the basis of the purchase order, he shall be obliged to effect payment of the full purchase price where there is no justification for annulment. The Customer shall have the right to furnish evidence of a lesser loss.

### 7. Liability for Material Defects

- (1) We guarantee that the ordered goods will be free of any defects according to the latest state-of-the-art technology. The mounting of our goods without instruction sheet has to be carried out by trained personnel only.
- (2) The Purchaser's claims to the elimination of defects shall first and foremost be limited to a claim for subsequent performance, i.e. rectification or substitute delivery. It shall be at our discretion whether we effect rectification or substitute delivery. Should rectification or substitute delivery fail, the Purchaser may request a reduction in price or annul the contract. Rectification shall be deemed to have failed where and in so far as a period of time granted to ourselves for subsequent performance expires without result. The prerequisites for exercising the right of annulment shall be determined by § 323 German Civil Code. The foregoing provision shall not apply to consumers. In this regard the statutory provisions shall apply.
- (3) The limitation period for material defects shall be one year from delivery of the item in the case of brand-new items. A limitation period of 3 years from delivery shall apply for deliveries of complete hydraulic systems. The sale of used items shall exclude any liability for material defects. The foregoing provisions shall not apply where the Customer is a consumer within the meaning of § 13 German Civil Code. Where consumer goods are purchased, the statutory warranty periods shall apply.
- (4) We shall assume liability according to the statutory provisions where the Purchaser asserts claims to compensation which are based on fraudulent intent, wilful intent or gross negligence, including fraudulent intent, wilful intent or gross negligence on the part of our representatives or agents. Where we cannot be

charged with intentional breach of contract, our liability shall be limited to the foreseeable losses which typically occur, however not exceeding the amount of cover provided by our employer's liability insurance (€7.5 million). In other respects our liability in respect of compensation shall be excluded; in this regard we shall in particular not assume liability for damage sustained by the delivery item unless this involves injury to life, limb and/or health. Our mandatory liability according to the German Product Liability Act shall likewise remain unaffected thereby.

- (5) In the event of rectification we shall be obliged to bear all expenditure incurred for the elimination of defects, in particular costs of transport, conveyance, work and material unless there is an increase in such costs due to the purchased item having been brought to a place other than the place of performance.
- (6) The foregoing provisions shall also apply in the event of damage which occurs during the elimination of errors or replacement of products in the framework of our liability for material defects.
- (7) The Purchaser's claims ensuing from our liability for material defects shall be conditional on due fulfillment in a timely manner of his obligations of inspection and the requirement to make a complaint in respect of a defect immediately on receipt of the goods incumbent on the Purchaser according to § 377 German Commercial Code. We must be immediately notified in writing of any defects, damage and deviations in quantity as follows: in the event of identifiable defects etc. within 14 calendar days after delivery at the latest and in the case of other defects which cannot be detected within this period even with careful inspection, within 14 days after discovery at the latest. Where notification of defect is not made in a timely manner, claims against ourselves in respect of such defects shall no longer be admitted. In the event of damage resulting from transport the special provision according to item 5.4 shall apply.
- (8) In the event of notification of defect we reserve the right to view and inspect the goods forming the subject of complaint in their unchanged state.
- (9) The assertion of contractual claims due to of a material defect shall be conditional on previous fruitless assertion of any warranty claims against the manufacturer.

#### **8. Liability on Other Legal Grounds**

- (1) Any liability going beyond the liability in respect of compensation embodied in item 7. shall be excluded irrespective of the legal nature of the asserted claim. This shall in particular apply to claims to compensation arising from negligence on conclusion of the contract, as a result of other breaches of duty or due to claims in tort in respect of compensation for material damage in accordance with § 823 German Civil Code.
- (2) Should liability in respect of compensation be excluded or limited in relation to ourselves, this shall likewise apply to the personal liability for compensation on the part of our white and blue-collar workers, employees, representatives and agents.

#### **9. Entrepreneur's Recourse**

- (1) Where the Purchaser sells on the sold item to a consumer in the course of business and is obliged to take back said item or reduce the purchase price due to defectiveness for which we are responsible, the Purchaser shall be entitled to assert his claims against ourselves in respect of material defects without fixing any time limit in this regard.
- (2) The Purchaser may moreover request reimbursement of the costs he incurred vis-à-vis the consumer where the defect asserted by the consumer was already present on the transfer of risk to the Purchaser. Such expenditure shall in particular include the costs of transport, conveyance, work and material.
- (3) The Purchaser shall hold no claim to compensation in the framework of entrepreneur's recourse.
- (4) The Purchaser's obligations in accordance with § 377 German Commercial Code shall remain unaffected by the foregoing provisions.

#### **10. Reservation of Title**

- (1) The purchased item shall remain our property until settlement of the claims accruing to ourselves on the basis of the purchase contract. Where the Purchaser is a merchant within the meaning of the German Commercial Code, we shall reserve the title to all delivery items until the receipt of all payments ensuing from the business relationship.
- (2) The Purchaser shall only be entitled with our consent to pass on or sell the delivery items in the ordinary course of business; for such eventuality he shall hereby assign to us all claims to the amount of the final invoice owed by himself for the purchase price (including value-added tax) accruing to him against his customers or third parties from resale irrespective of whether the delivery items have been sold on with or without having undergone processing. The Purchaser shall also be authorised to collect these claims following assignment. Our authority to collect said claims ourselves shall remain unaffected thereby. We undertake to refrain from the collection of said claims ourselves as long as the Purchaser fulfils his obligations of payment in accordance with the terms of the contract, and no petition is submitted for the commencement of insolvency proceedings. Should one of the last-mentioned circumstances occur, the Purchaser shall at our request provide all information required for collection of the assigned claim and furnish us with the associated documents and notify the respective debtors (third parties) of assignment.
- (3) Processing or transformation of the subject of delivery shall take place on behalf of ourselves in all cases. Where the subject of delivery is combined with other objects not belonging to ourselves, we shall acquire co-ownership to the new item proportionate to the value of the subject of delivery in relation to the other processed objects at the time of processing. The item resulting from processing shall in other respects be governed by the same provisions as the item supplied with reservation. Where the subject of delivery is inextricably commixed with other objects not belonging to ourselves, we shall acquire co-ownership to the new item proportionate to the value of the subject of delivery in relation to the

other commixed objects. Where commixtion takes place in such a manner that the Purchaser's item is to be considered as the principal item, it shall be deemed to have been agreed that the contracting party transfers co-ownership to ourselves on a pro-rata basis. The contracting party shall keep safe the resulting sole ownership or co-ownership item thus created for ourselves.

- (4) Where the value of the security for the claims to be safeguarded exceeds 20%, the Vendor shall be obliged to release the security to which he is entitled at the Purchaser's request. We shall be free to select the security to be released at our discretion.

#### **11. Repair – Servicing – Assembly**

- (1) The General Terms and Conditions of Business shall – where relevant – also apply to work performed by ourselves in respect of repair, servicing and assembly. Moreover, the following clauses shall be deemed to have been additionally agreed.
- (2) The delivery of parts for repair and old parts shall be effected carriage paid in all cases. We shall make a charge for costs of freight or haulage incurred thereby.
- (3) In the case of serviced parts shipment shall be effected in all cases not prepaid for the Customer's account.
- (4) The warranty shall in the case of repairs and service extend to proper technical execution as well as to dimensional accuracy and maintenance of the strength and load-bearing capacity of the serviced vehicles or vehicle parts. In the case of repairs warranty claims shall expire by limitation within one year after acceptance of the work performance, and vis-à-vis consumers within a period of 2 years.
- (5) Where defects in our work are observed during the assembly of superstructures or other components at third-party workshops, we must be notified before the resumption of assembly so that such defects can be eliminated. Where no such notification is made, any resulting additional costs or other losses shall be for the Customer's account.
- (6) We do not accept liability for
  - defects to units whose elimination is not included in the scope of the repair contract
  - theft in the case of vehicles which cannot be locked
  - damage to engines due to an absence of anti-freeze protection or
  - the content or cargo of vehicles made available to ourselves for the purposes of repair.
- (7) A lien for the costs and disbursements incurred for servicing shall accrue to ourselves in respect of the objects made available to ourselves for servicing. The contractual lien can also be enforced in relation to claims ensuing from earlier work and all other services where same are associated with the subject of the order. As regards other claims ensuing from the business relationship the contractual lien shall only apply where undisputed or recognised by declaratory judgement.

#### **12. Data Protection – Acquisition of Data**

- (1) We shall be entitled to perform electronic storage and processing of all data relating to the Purchaser which pertain to the business relationship, for the purpose of contractual performance under consideration of the provisions of the German Data Protection Act.
- (2) The Customer consents to transmission by the Winkler Group to EOS Information Services GmbH, Gottlieb-Daimler-Ring 7, 74906 Bad Rappenau, Germany, of information relating to failure to comply with the terms of contract such as default in payment, returned direct debits, summary notices to pay etc. as well as communication data. Such reports may only be made according to the German Data Protection Act where this is permissible after weighing up all interests concerned. EOS Information Services GmbH shall store and transmit said data to its contracting parties in Germany. Such data contain information about the willingness to pay and solvency of companies. The contracting parties of EOS Information Services GmbH shall include firms from industry, the service sector and commerce, which offer deliveries and service on credit. EOS Information Services GmbH shall only make personal data available where a justified interest in this respect has been plausibly demonstrated. The Customer may ask EOS Information Services GmbH to provide information about the data on his company in writing.

#### **13. Legal Venue – Place of Performance – Choice of Law**

- (1) The place of performance for all deliveries shall be the registered office of our company.
- (2) Legal venue for Winkler companies in Germany: Stuttgart (District Court of Bad Cannstatt) shall be the legal venue where the Purchaser is a merchant within the meaning of the German Commercial Code, a legal person under public law or a separate asset under public law. In this case we shall also be entitled to bring an action against the Purchaser before the court at his place of residence. This shall also apply correspondingly where the Purchaser has no general legal venue in Germany, transfers his place of residence or customary abode outside Germany after conclusion of the contract or where his place of residence or customary abode is unknown at the time the action is brought.
- (3) The contract shall be solely governed by the laws of the Federal Republic of Germany. The applicability of the UN Law on the International Sale of Goods shall be excluded.
- (4) Should individual provisions of the terms of sale be invalid, the validity of the contract in other respects shall remain unaffected thereby. Invalid provisions shall be superseded by the statutory provisions.

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