

General Conditions of WAFIOS Umformtechnik GmbH for Tools and Spare Parts (as of: 2024)

Scope of application, exclusion of third-party terms and conditions, conclusion of contract

All of our quotations, deliveries, and services relating to tools and spare parts are based on the following conditions (hereinafter referred to as “**GTC**”) and the ORGALIME S 2022 – General Conditions for the Supply of Mechanical, Electrical and Electronic Products, dated October 2022 (hereinafter referred to as “**ORGALIME GTC**”) which we will send to you on request. In the event of contradictions, these conditions take precedence over the ORGALIME S 2022. We expressly object to the validity of the customer's general terms and conditions of business.

The provisions below shall apply only to merchants as defined by Section 14 of the German Civil Code (BGB), a legal entity under public law, or a special fund under public law (hereinafter referred to as “**customer**”).

Agreements become binding only after we have issued the corresponding order confirmation, or by delivery of the item or service concerned. Our order confirmation or, in the absence of an order confirmation, our quotation shall define the scope of the delivery and service.

Data protection information in accordance with the GDPR

We collect and process your personal data exclusively to establish and conduct the actual contractual relationship. In such cases, data processing takes place in line with the legal basis of Article 6, Paragraph 1, Points (b) and (f) of the GDPR.

For further information on data protection for the purposes of establishing and conducting contractual relationships, please visit our website www.wafios-umformtechnik.com and the Privacy policy section. If you have received this information by mail and this is the first time you have had contact with us for business purposes, the Privacy Policy document has been included with this correspondence.

Prices and charges

Our prices are net prices. They are quoted excluding the applicable value-added tax.

For deliveries outside Germany, the following shall apply: All duties and any kind of taxes charged now or in the future by the government or a public authority in the country of the customer in connection with the sales contract have to be paid by the customer.

All bank charges and costs that apply to payments from the customer to us have to be paid by the customer. If payment deadlines are not met, we reserve the right to charge interest.

Reservation of Proprietary Rights

The goods shall remain our property until they have been paid for in full.

Warranty

The period of limitation for claims for defects on the part of the customer, subject to the subsequent provisions of this paragraph (1), is one year, calculated from the date on which the customer received the delivery. Should any defect(s) have been fraudulently concealed, the statutory time limits shall apply to any and all claims for damages. The statutory periods shall also apply to any claims for damages on the part of the customer due to defects if we are charged with intent or gross negligence, or if the claim for damages relates to death, personal injury, or harm to health.

Our warranty obligation only extends to the delivery of newly manufactured products. Unless otherwise agreed, used products are sold as is under exclusion of any warranty rights.

No warranty claims shall be accepted in the following cases in particular: unsuitable or improper use, incorrect installation by the customer or a third party, natural wear and tear, incorrect or negligent handling, installation of faulty software, improper maintenance, mechanical, chemical, electronic, electrical, or comparable influences that do not correspond to the average, standard influences.

Furthermore, no warranty claims shall be accepted if the customer

- a) modifies the delivery item or allows it to be modified by a third party, and/or
- b) replaces parts of the delivery item or allows parts to be replaced with third-party spare parts other than original spare parts supplied by us

without this being necessary, as a result of a delay on our part with regard to one of our obligations and the expiry of a grace period set by the customer without any results or for other significant reasons, in order to enable use of the delivery item in accordance with the contract. This does not apply if the customer can prove that the defects in question were not caused by the third-party spare parts or by the modifications made to the delivery item by the customer or a third party.

Industrial property rights and defects of title

Unless otherwise agreed, we shall be obliged to deliver products that are free from third-party industrial property rights and copyrights (referred to hereinafter as “**property rights**”) only within the Federal Republic of Germany. If a third party raises justified claims against the customer on account of infringement of property rights by products delivered by us and used in accordance with the contract, we shall be liable to the customer, subject to the following regulations, as stipulated by the statutory provisions.

Liability

Whatever the legal grounds, we shall only be liable for damage

- a) insofar as we, our legal representatives, or vicarious agents are charged with intent or gross negligence
- b) in the event of culpable injury to life or limb
- c) in the event of culpable violation of significant contractual obligations
- d) in the event of defects which we fraudulently concealed or the absence of which we guaranteed
- e) insofar as a liability exists under the Product Liability Act for personal injury or damage to property for privately used items.

We shall not be liable for any further damages.

A significant contractual obligation is an obligation which must be fulfilled in order to enable the proper performance of the contract and on which the contractual partner can and does routinely rely.

In the event of infringement of significant contractual obligations due to slight negligence (excluding intent and gross negligence), our liability shall however be limited to reasonably foreseeable damage typically associated with agreements of this type.

Proper and correct delivery by suppliers and force majeure

If, for reasons for which we are not responsible, we do not receive deliveries or services from our sub-suppliers or from subcontractors, despite proper coverage, i.e. despite contractual agreement with the subcontractor with which the customer's performance claim can be fulfilled in accordance with the contract in terms of quantity, quality and performance period, or if we do not receive such deliveries or services correctly or on time, or if events of force majeure, i.e. an event that comes from outside, that is unrelated to operational activities of the company, and that cannot be averted even by exercising the utmost reasonable care, and that lasts for more than 14 calendar days, we will inform our customer in text form in good time. In this case, we are entitled to postpone the delivery or service for the duration of the impediment or to withdraw from the contract in whole or in part due to the part not yet fulfilled, provided that we have complied with our aforementioned duty to inform and the impediment to performance is not only of a temporary nature. The following events are deemed to be force majeure: war, terrorist attacks and acts, riots, epidemics, pandemics, natural disasters, extreme natural events, foreign exchange and export restrictions, restrictions on the availability of energy, government measures or official orders, strikes, lockouts, shortages of energy and raw materials, transport bottlenecks through no fault of our own, operational hindrances through no fault of our own, for example through fire, water and machine damage, and all other hindrances which, viewed objectively, were not culpably caused by us. This also includes difficulties in procuring raw materials as well as defective or delayed deliveries by suppliers due to force majeure.

If a delivery and/or performance date or a delivery and/or performance period has been agreed as binding and if, as a result of events pursuant to above section, the agreed delivery and/or performance date or the agreed delivery and/or performance period is exceeded by more than six months, or if, in the case of a non-binding performance date, it is objectively unreasonable for the customer to adhere to the contract, the customer will be entitled to withdraw from the contract on account of the part not yet performed. Further rights of the customer, in particular claims for damages, do not exist in this case.

Software usage

If the scope of delivery includes software, we shall grant the customer a non-exclusive right to use the supplied software including its documentation in accordance with the contract. Using the software on more than one system is prohibited.

The customer may only use the software to the extent permitted by law. The customer agrees not to remove information from the manufacturer – particularly copyright notices – or to modify it without our prior written consent.

All other rights relating to the software and the documentation, including copies, remain with us or with the software supplier. Sub-licensing is not permitted.

Acceptance

If an acceptance takes place, the following regulations shall apply.

If the customer refuses to accept the delivery item without justification or without providing reasons, we are entitled to set a deadline of 14 days in writing for the customer to declare acceptance. Acceptance shall be deemed to have taken place if the customer fails to accept the delivery item by this deadline or fails to specify in writing the major defects that have been identified.

In any case, the delivery item shall be deemed to have been accepted if the customer is or could be using the item productively. The warranty period begins at this point. We are then entitled to claim payment of any outstanding balance.

Export/shipment

If the deliveries and services ordered by the customer are subject to an export license, the offer is subject to obtaining all necessary export approvals in due time and to a sufficient extent.

Sovereign measures of public authorities with regard to export licenses, particularly the withdrawal or restriction of already granted approvals, are considered force majeure.

Should it appear, prior to delivery, that WAFIOS Umformtechnik will find it impossible or difficult to fulfil the terms of the contract due to national or international export control regulations, specifically embargos or other sanctions, WAFIOS Umformtechnik shall be entitled to withdraw from the contract without notice. In case of withdrawal, the assertion of damages or the assertion of other rights by the customer on account of such withdrawal is ruled out.

Delays caused by export checks or approval procedures are considered to impact the term of delivery, unless WAFIOS Umformtechnik is responsible for such delays.

The customer undertakes, for the purposes of delivery, to provide all information and records essential to the export or shipping of the products to be delivered in accordance with the contract, unless such documentation is in the WAFIOS Umformtechnik domain.

If the products delivered by WAFIOS Umformtechnik or the works and services furnished by WAFIOS Umformtechnik are passed on, assigned or otherwise transferred to third parties at home or abroad, the customer shall be obliged to comply with the provisions of the national and international export control laws concerned.

Exclusion of export or re-export to Russia

The customer shall not sell, export or re-export, directly or indirectly, to the Russian Federation or for use in the Russian Federation any goods supplied under or in connection with this Agreement that fall under the scope of Article 12g of Council Regulation (EU) No 833/2014.

The customer shall undertake its best efforts to ensure that the purpose of the preceding paragraph is not frustrated by any third parties further down the commercial chain, including by possible resellers.

The customer shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by possible resellers, that would frustrate the purpose of the above-mentioned paragraph.

Any violation of the above paragraphs shall constitute a material breach of an essential element of this Agreement, and WAFIOS Umformtechnik shall be entitled to seek appropriate remedies, including, but not limited to:

- a) termination of this Agreement; and
- b) a penalty of 5 % of the total value of this Agreement or price of the goods exported, whichever is higher.

The customer shall immediately inform the WAFIOS Umformtechnik about any problems in applying of the above-mentioned paragraphs, including any relevant activities by third parties that could frustrate the purpose of these paragraph. The Customer shall make available to WAFIOS Umformtechnik information concerning compliance with the obligations under the above paragraph within two weeks of the simple request of such information.

Installation conditions

If commissioning, repair, inspections, service and training by our installation personnel form part of the contract, our installation conditions shall apply which we will then make available to you.

Place of jurisdiction

The sole place of jurisdiction for all claims arising from the business relationship is Wuppertal, provided the customer is a businessperson, a legal entity under public law, or a special fund under public law. However, we are also entitled to initiate legal proceedings against the customer at the customer's general place of jurisdiction.

Arbitration

The following provisions apply exclusively to deliveries abroad.

Any disputes, differences of opinion, or claims arising from or in connection with this contract, including its validity, invalidity, violation, or termination, are to be resolved by means of an arbitration procedure in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution. The version of the arbitration rules that is valid when the notification of the initiation of arbitration proceedings is delivered shall apply.

The court of arbitration shall comprise one member. The seat of the arbitration shall be in Zurich. The language of the arbitration shall be English.

Choice of law

All disputes arising from contracts to which these GTC apply, and all disputes arising from the business relationship between us and the customer, are exclusively governed by the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) and private international law are excluded.