

General Business Terms and Conditions of Carl Warrlich GmbH

§ 1 Scope

1. The following terms and conditions are part of all offers and contractual acceptance declarations on our part and the basis of all sales, deliveries and provision of services and work services including consulting and information. These Business Terms and Conditions apply exclusively to entrepreneurs, legal entities under public law or special funds under public law within the meaning of Section 310 Para. 1 German Civil Code [Bürgerliches Gesetzbuch - BGB]. We shall only recognise contradictory business terms and conditions of the customer or those which deviate from our Business Terms and Conditions if we explicitly approve the validity in writing. These Business Terms and Conditions shall also apply if we carry out the delivery to the customer without reservation in the knowledge of contradictory or deviating terms and conditions of the customer.

2. These Business Terms and Conditions shall also apply to all future business with the customer, insofar as it concerns legal transactions of a related kind.

3. Individual agreements reached with the customer in a single case (including collateral agreements, supplementations and amendments) shall in any case have precedence over these Business Terms and Conditions. A written contract or a written confirmation by us shall be decisive for the content of such agreements, subject to proof to the contrary.

4. Insofar as declarations according to these Business Terms and Conditions are to be carried out in writing this shall also be safeguarded by the text form pursuant to Section 126b BGB.

5. In case of work services, the acceptance of the delivered goods can be replaced by official approval and in the case of services by acceptance of the service.

§ 2 Offer and conclusion of contract

1. The presentation in our catalogue shall not represent any legally binding offer. Insofar as we prepare an offer this shall be valid for four weeks from the offer date unless a deviating period of validity is stated in the respective offer.

2. With the order, the customer submits a binding offer towards Carl Warrlich GmbH
Falkener Landstraße 9
99830 TREFFURT/GERMANY,
which shall become the contractual partner upon conclusion of a contract.

3. The purchase contract shall be concluded insofar as we confirm the order in writing, by sending the goods or with a prior offer on our part by the offer within the period of validity of the offer. An automated email or other letter, which merely confirm the receipt of their order shall not yet represent an acceptance of the order.

4. Oral collateral agreements and amendments of contracts or these contractual terms and conditions with us or our representatives shall require a written confirmation of the management in order to be valid.

§ 3 Documents handed over

We reserve the property right and copyright to all documents handed over to the customer in connection with the placement of the order - also in electronic form - such as e.g. illustrations, calculations, drawings, etc. This shall also apply to those documents, which are designated as "confidential". Documents handed over may not be made accessible to third parties unless we grant an explicit written consent to the customer in this respect. Insofar as we do not accept the customer's offer within the deadline of § 2, these documents are to be returned to us without delay.

§ 4 Prices and terms of payment

1. Unless otherwise agreed in writing, our prices shall apply "ex works" plus the applicable value added tax in the respectively valid amount. Costs of the packaging and transport as well as insurance will be invoiced separately. Further costs, in particular customs clearance, import taxes/duties as well as costs of monetary transactions shall be borne by the customer.

2. The payment of the purchase price has to be made exclusively into one of the business accounts listed on the business documents. The deduction of cash discount is only permitted with a special written agreement.

3. Unless otherwise agreed the price is to be paid within 30 days after issue of the invoice. Default interest shall be charged in the amount of 9% above the respective base lending rate p.a. The assertion of higher damages due to default shall remain reserved. The customer is however entitled to prove towards us that no or less damages were suffered by us as a result of the default of payment.

4. Insofar as no fixed price agreement has been reached, we reserve the right to make reasonable price changes because of changed wage, material, raw material, energy and distribution costs for deliveries, which are carried out 4 months or later after conclusion of the contract. The customer shall be entitled to a right of rescission in the event of the increase by more than 5% of the agreed purchase price.

5. The customer shall only be entitled to rights of set-off if its counterclaims have been declared final and binding, are undisputed or have been recognised by us, or they are in a relationship of reciprocity (synallagma) with the principal claim. The customer shall only be entitled to a right of retention because of counterclaims that have been determined, are undisputed, have been recognised by us or are in a reciprocal relationship (synallagma) to the main claim. In addition, it is authorised to exercise a right of retention to the extent that its counterclaim is based on the same contractual relationship.

6. Credit notes are explicitly issued for the purpose of offsetting. There is no claim for payout.

7. We have the right to assign our claims against the customer.

8. In case of doubts about the solvency of the customer we reserve the right to request advance payments or provision of securities. If we become aware that an unsuccessful seizure has been carried out at the customer or if we receive indications of the deterioration of assets of the customer, we shall be entitled to rescind the contract by offsetting the expenses incurred.

§ 5 Framework supply contract

Insofar as we conclude contracts with customers regarding the repeated delivery of a certain or indefinite quantity of goods, irrespective of whether a certain or indefinite term has been agreed, the General Business Terms and Conditions as well as in addition the following shall apply:

1. The prices agreed upon conclusion of the contract have a period of validity of 1 year unless we individually agree on another period of validity in writing with the customer.

2. The prices agreed with the customer are deemed net prices ex works and are to be paid plus the statutory value added tax in the amount of the tax rate applicable on the day on which the tax is incurred.

3. If the raw material costs, energy supply costs, transport costs or in case of delivery overseas public taxes and duties to be paid by us, applicable at the time of conclusion of the respective contract, increase we shall be entitled to increase our prices in the ratio, in which due to the cost change our total costs increase. In this case we are obliged, at the request of the customer, to disclose our original cost calculation as well as the occurred cost increases in writing. Should the prices increase by more than 10% the customer is entitled to terminate the contract without adhering to a period of notice.

§ 6 Delivery time

1. Binding delivery dates shall require a written agreement. Delivery dates shall normally be confirmed in the order confirmation by stating an approximate calendar week.

2. If delivery periods have been agreed, these shall commence with the dispatch of the order confirmation, but not before the provision of any documents, authorisations and approvals to be procured by the customer as well as the details of execution and, if applicable, before receipt of an agreed down payment. If the customer requests changes after acceptance of the order, which have an influence on the duration of the production, the delivery deadline shall begin to run once again from the day of our confirmation of the change.

3. If delivery against advance payment has been agreed, the delivery periods shall commence upon receipt of the purchase price in our account.

4. The commencement of the delivery period stated by us or agreed with us is subject to the timely and proper fulfilment of the customer's obligations and the proper supply of the raw materials required for the manufacture of the delivered product. The defence of non-performance of the contract remains reserved.

5. Force majeure, which delays, makes impossible or interrupts the manufacture, delivery and transport of the purchased products, shall entitle us to postpone the delivery for the duration of the hindrance and a reasonable start-up time or, if we are unable to remedy these disruptions in the foreseeable future and at reasonable expense, to withdraw from the delivery obligations in whole or in part without the customer being entitled to compensation. Force majeure shall include all circumstances independent of the will and influence of the contractual parties, such as natural disasters, government measures, decisions by authorities, blockades, war and other military conflicts, mobilisation, civil unrest, terrorist attacks, strikes, lockouts and other labour unrest, confiscation, embargo, pandemic situations or other circumstances that are unforeseeable, serious and beyond the control of the contractual parties and occur after the conclusion of this contract. The same applies if the advance deliveries required to fulfil our obligations are cancelled. In such a case, the client shall be informed immediately of the non-availability of the service.

6. In case of default of acceptance by the customer or culpable breach of other collaboration obligations, we shall be entitled to demand compensation for the damage incurred by us in this respect, including any additional expenses. Further claims or rights shall remain reserved.

If the delivery, dispatch or delivery is postponed at the request of the customer, we may charge the customer a storage fee of 0.5% of the invoice amount for each month or part thereof, up to a maximum of 5% of the invoice amount, 10 days after notification that the goods are ready for dispatch. The contractual parties reserve the right to provide evidence of higher or lower expenses. If the above conditions are met, the risk of accidental loss or accidental deterioration of the goods shall pass to the client at the point in time at which the client is in default of acceptance or debtor's delay.

7. Claims for damages because of delay in delivery are excluded against us unless we or our vicarious agents are guilty of wilful intent or gross negligence. Should we be liable in case of simple negligence due to special circumstances our liability shall be limited to compensation due to default for each full week of the delay in the amount of 0.5% of the value of that part of the delivery that is outstanding. Irrespective of the duration of the default the maximum compensation shall amount to 5% of the value of the goods. This shall also apply to possible damages because of non-fulfilment in case of simple negligence.

Irrespective of the above statements the customer is entitled, in the event of default, for which we are responsible, to rescind the contract after setting a reasonable final deadline.

8. We are entitled to make partial deliveries to a reasonable extent. A partial delivery made shall be deemed as an independent business transaction. Payment of the partial delivery may not be refused because of still outstanding quantities.

9. Deviations with regard to the dimensions, weight, technical design, production and the volume of the goods to be delivered are permitted within the customary product-specific tolerances.

10. We reserve the right to deliver additional or a shortfall in quantities of the ordered quantities up to a maximum of plus/minus 10%, insofar as this is deemed reasonable for the customer and to calculate the price accordingly.

Or

We reserve the right to deliver additional or a shortfall in quantities of the ordered quantities up to a maximum of plus/minus 10% at the agreed order price.

§ 7 Passing of risk with the shipment

1. If the goods are sent to the customer at its request the risk of accidental loss or accidental deterioration of the goods shall pass to the customer with the dispatch to the customer at the latest when the goods leave factory/warehouse. This shall apply irrespective of whether the goods are shipped from the place of performance or who bears the freight costs. If the dispatch is delayed for reasons, for which we are not responsible the risk shall pass to the customer already with the notification that the goods are ready for shipment.

In the event that the goods are picked up by the customer the risk shall pass to the customer with the notification that the goods are ready for collection, at the latest when the goods are picked up. Sentence 1 and Sentence 2 shall also apply if the delivery is made in parts, or we have assumed the assembly of the goods at the customer. The latter shall also apply if there is an (un)foreseeable period of time between delivery at the customer and installation/processing.

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2. In case of a contract for work and services the risk shall pass to the customer with the commissioning of the work by us, at the latest however with the acceptance of the work. This shall also apply to partial acceptances, insofar as these can be achieved according to the type and condition of the work. If no acceptance is requested by the customer the service shall be deemed as accepted after the expiry of twelve workdays after written notification of the completion. The aforementioned regulations shall also apply to partial acceptances. The acceptance cannot be refused or delayed because of slight defects.

3. If requested by the customer, we shall cover the delivery by transport insurance; the correspondingly incurred costs shall be borne by the customer.

4. The customer may not refuse acceptance of deliveries because of insignificant defects.

§ 8 Reservation of title

1. We reserve the property to the delivered object until full payment of all claims from the supply contract.

This shall also apply to all future deliveries, even if we do not always explicitly refer hereto. We are entitled to take the object of purchase back if the customer behaves in breach of the contract. We can also declare the rescission by the fact that the object is taken back. After taking back the object, we shall be entitled to realise it. The realisation proceeds are to be set off against the liabilities of the customer - less reasonable realisation costs.

2. The customer is obliged, as long as the property has not yet been transferred to it, to treat the object with due care. It is in particular obliged to insure the object sufficiently at its own costs against theft, fire and water damages at the value as new. If service and inspection work has to be carried out, the customer must carry this out in good time at his own expense. As long as the property has not yet been transferred the customer has to inform us without delay in writing if the delivered object is seized or if it is exposed to other interventions of third parties. In case a legitimate interest is credibly substantiated the customer has to provide us without delay the information that is required to assert its rights against its customer and to hand over the necessary documents.

Insofar as the third party is not in the position to reimburse us the court and out-of-court costs of a legal action pursuant to Section 771 German Code of Civil Procedure [Zivilprozessordnung - ZPO] the customer shall be liable for the loss incurred to us.

3. The customer is entitled to resell the reserved goods in normal business transactions. The customer hereby now already assigns the claims against the buyer from the resale of the reserved goods to us in the amount of the final invoice amount agreed with us (including value added tax). This assignment shall apply irrespective of whether the object of purchase has been resold without or after processing. The customer shall also remain authorised to collect the claim after the assignment. Our authorisation to collect the claim ourselves shall remain unaffected by this. In this case, we can request that the customer announces the assigned claims to us and their debtors, provides all details required for the collection, hands over the associated documents and notifies the debtors (third parties) of the assignment. The claims assigned to us by the customer in advance shall also refer to the recognised balance and, in the event of insolvency of the buyer, to the then existing causal balance. However, we shall not collect the claim as long as the customer satisfies its payment obligations from the collected proceeds, is not in default of payment and, in particular, no application for the opening of insolvency proceedings has been filed or payments have been suspended. This shall only cease to apply in the event that no extended reservation of title is wanted.

4. The handling, processing or remodelling of the object of purchase by the customer shall always be carried out on behalf and by order of us. In this case the expectant right of the customer to the object of purchase shall continue to the remodelled object. If the object of purchase is processed with other objects not belonging to us, we shall acquire co-ownership of the new object in the ratio of the objective value of the object of purchase to the other processed objects at the time of processing. The same shall apply in the event of mixing. Insofar as the mixing is carried out in the manner that the object of the customer is to be seen as the main object, it shall be deemed as agreed that the customer transfers pro rata co-ownership to us and shall hold the thus produced sole ownership or co-ownership in safekeeping for us. In order to secure our claims against the customer it shall also assign such claims to us, to which it is entitled through the connection of the reserved goods with a property against a third party; we hereby accept this assignment now already.

5. We undertake to release the collateral items to which we are entitled at the request of the customer insofar as their value exceeds the claims to be collateralised by more than 20%; we shall be responsible for selecting the collateral items that are to be released.

6. In case of deliveries to countries of destination with other legal systems in which this reservation of title regulation does not have the same security effect as in the Federal Republic of Germany, the customer hereby grants us a corresponding security right to the reserved property goods or another security for our claim without delay. This security must be effective according to the respectively applicable law and as far as possible correspond with the reservation of title according to applicable German law. The customer will assist in all measures, which are necessary and conducive for the validity and assertability of such security rights.

§ 9 Condition

1. Unless otherwise agreed, the documents belonging to our offer (illustrations, drawings, information on dimensions and weights) are only approximately decisive and therefore only binding within the scope of the admissible tolerances. The same shall apply to exhibits and catalogue illustrations.

2. We would like to point out that the weights stated for our lighter products are the weights at the time of manufacture. Over the course of time, product-dependent weight reductions may occur. The weight reduction has no influence on the actual product characteristics and therefore does not constitute a defect.

§ 10 Warranty and notification of defects as well as recourse/manufacture recourse

1. Warranty rights of the customer presume that it has properly satisfied its responsibilities for inspection and to report complaints according to Section 377 German Commercial Code [Handelsgesetzbuch - HGB]. For the warranty claim of our kindling products, the use of the specified packing schemes and the corresponding transport protection, as well as

proper storage are a prerequisite. Please refer to the respective product data sheets for information on proper storage.

2. a) If it concerns a purchase contract the statute of limitations for subsequent performance, rescission or reduction with new objects is one year.

The deadline will begin with the delivery of the object of purchase. For used objects subsequent performance, rescission and reduction are excluded.

b) If it concerns a contract for work and services the statute of limitations for subsequent performance, rescission and reduction for entrepreneurs is one year. The deadline shall begin with the acceptance of the work or, in the absence of an acceptance, with the commissioning of the work.

3. For claims for damages in case of wilful intent and gross negligence as well as with injury to life, the body and the health, which are the result of a wilful or negligent breach of obligation by the user, the legal statute of limitations shall apply. With the sale of used goods the warranty period is, with the exception of the claims for damages stated in Sentence 1, is excluded. Insofar as the law prescribes longer deadlines pursuant to Section 438 Para. 1 No. 2 BGB (buildings and items for buildings), Section 445b BGB (right of recourse) and Section 634a Para. 1 BGB (building defects), these deadlines shall apply. Our consent is to be obtained before returning the goods.

4. Should, despite all applied care, the delivered goods feature a defect, which already existed at the time when the risk passed, we shall at our option subsequently improve the goods or deliver replacement goods, subject to a timely report of defects. We are always to be given the opportunity for subsequent performance within a reasonable deadline. Claims for recourse shall remain unaffected by the aforementioned regulation without restriction.

5. If the subsequent performance fails—irrespective of possible claims for damages—the customer can rescind the contract or reduce the remuneration. We may refuse the subsequent performance if the expenses for remedying the defect are expected to exceed the purchase price.

6. Claims for defects shall not exist in case of a merely insignificant deviation from the agreed condition, in case of a merely insignificant impairment to the usability, with natural wear and tear as with damages, which were suffered after the passing of risk as a result of defective or negligent handling, excessive use, unsuitable operating materials, defective construction work, unsuitable building foundation or due to special external influences, which have not been envisaged as a prerequisite according to the contract. If improper repair work or changes are carried out by the customer or third parties no claims due to defects shall exist either for these and the thus incurred consequences.

7. Claims of the customer because of the expenses necessary for the purpose of the subsequent performance, in particular transport, travel, labour and material costs, are excluded, insofar as the expenses are increased, because the goods delivered by us were subsequently taken to another location than the branch of the customer, unless the transport corresponds with their intended use.

8. Installation and removal costs shall only be borne by us if the object, in accordance with its type and its intended purpose was installed in another object or affixed to another object and we are responsible for the defect that is the cause for the assertion of the claims for subsequent performance.

9. Claims for recourse of the customer against us shall only exist to the extent that the customer has not reached any agreement with its buyer beyond the statutory mandatory claims due to defects. Paragraph 6 shall furthermore apply accordingly to the scope of the claim for recourse of the customer against the supplier.

10. Mandatory liability under the German Product Liability Act [Produkthaftungsgesetz] remains unaffected.

§ 11 Overall liability

1. Our liability for damages is limited to wilful intent and gross negligence. This shall not apply to liability due to an injury to life, the body or the health, due to the breach of cardinal obligations as well as due to the German Product Liability Act. Cardinal obligations in this meaning are obligations, arising from the nature of the contract and with the breach of which the achievement of the contractual purpose is endangered. Irrespective of the form of fault liability of the customer is limited to compensation of foreseeable damages that are typical for the contract. Liability for indirect damages, consequential damages from defects and claims of third parties is excluded. This shall not apply to liability due to a maliciously non-disclosed defect, due to an injury to life, the body or the health as well as due to the German Product Liability Act.

2. Limited to the same extent is personal liability of the legal representatives, vicarious agents and employees of the supplier's company for damages caused by these parties.

3. The statute of limitations for claims for damages of the customer is one year, unless the claims are a result of a maliciously non-disclosed defect, of the defect to an object, which in accordance with its customary use has been used for a building structure and caused its defective condition, on injury to life, the body or the health, to wilful intent or gross negligence or to the German Product Liability Act. In this case the legal statute of limitations shall apply.

§ 12 Economic sanctions

1. The customer undertakes to comply with all applicable laws, including the legal regulations on export controls and economic sanctions. The applicable export control and economic sanctions regulations may vary depending on the respective transaction and may include resolutions of the United Nations, the USA, the European Union and/or individual countries or groups of countries.

2. In particular, the customer may not sell or resell the Goods to any natural or legal entity (whether as a single product or service or together with other products or services) if this could result in a breach of applicable export control or economic sanctions regulations or export licences issued by any authorities.

3. If we have sufficient reason to believe that the customer has breached or will breach the aforementioned export control laws and regulations, we may, after notifying the customer accordingly and without prejudice to the rights to which the customer is otherwise entitled, suspend the contractual delivery until the customer can prove by submitting appropriate supporting documents that no such breach has occurred or is to be expected. If the customer fails to provide such evidence within thirty (30) days of the notification to the company, we may terminate the contract without incurring any liability to the customer.

4. We may suspend our performance of the contract without liability to the customer if and to the extent that new legislation on economic sanctions or export laws come into force which make it impossible or illegal for us to perform the contract.

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§ 13 Data protection

1. Personal data is collected, processed and stored by us exclusively pursuant to applicable laws, in particular the German Federal Data Protection Act [*Bundesdatenschutzgesetz - BdsG*], the German Data Protection Regulation (GDPR) and the German Telemedia Act [*Telemediengesetz - TmG*]. The protection of your personal data during your visit to our website is important to us. Your data is protected according to the legal regulations.
2. Personal data is only collected if you provide this information voluntarily, for example as part of an enquiry or registration.
3. If you have provided us with personal data, we will only use it to answer your enquiries, to process contracts concluded with you and for technical administration.
4. Your personal data will only be passed on to third parties or otherwise transferred if this is necessary for the purpose of contract processing - in particular the transfer of order data to suppliers - or for billing purposes, or if you have given your prior consent. You have the right to revoke your consent at any time with effect for the future.
5. The stored personal data will be erased if you revoke your consent to storage, if knowledge of the data is no longer required to fulfil the purpose for which it was stored or if its storage is inadmissible for other legal reasons.
6. We provide additional information on data protection as well as the type, scope and purpose of our collection and use of personal data in our privacy policy.

§ 14 Miscellaneous

1. The contractual relationship shall be governed exclusively by German law, excluding the conflict of laws provisions of international sales law. The application of the UN Convention on Contracts for the International Sale of Goods and other international agreements on the standardisation of sales law is expressly excluded.
2. The exclusive place of jurisdiction for deliveries and payments (including actions on cheques and bills of exchange) and for all other disputes arising, insofar as the customer is a registered trader, a legal entity under public law or a special fund under public law, shall be Eisenach County Court or Meiningen Regional Court, depending on the amount in dispute. However, we reserve the right to also file suit at the general place of jurisdiction of the customer.
3. The place of fulfilment for all obligations arising from this contract is our registered seat.
4. Should individual provisions be or become void, ineffective or contestable, the remaining provisions shall remain unaffected and shall then be interpreted or supplemented in such a way that the intended economic purpose is achieved as closely as possible in a legally permissible manner. This shall also apply to any passages that need to be supplemented.
5. Should a provision of these Business Terms and Conditions be invalid with regard to mandatory foreign law, the customer shall, upon request, agree with us such contractual supplements and make such declarations to third parties or authorities as will ensure the validity of the provision concerned - and if this is not possible - its financial content under foreign law.
6. The German version of the General Terms and Conditions of Sale is the decisive version. It has precedence over the English translation in the case of translations and is modelled on the German version.

Status: July 2023