

GENERAL TERMS AND CONDITIONS OF SALES AND DELIVERY (GTC)

Status: 1 August 2018



I. SCOPE OF APPLICABILITY, GENERAL

1. These General Terms and Conditions of Sales and Delivery ("GTC") of WEPF GmbH, Schlauch-Rohr-Technik, Max-Planck-Strasse 15, D-89584 Ehingen, Germany ("we" or "WEPF") shall apply to all business transactions concerning delivery of goods to customers ("Sales Contracts"), regardless of whether we ourselves have manufactured the goods or have obtained them from third parties.
2. The scope of applicability of these GTC shall be restricted to contracts with business enterprises (*Unternehmer*), legal persons under public law, or an investment fund (*Sondervermögen*) under public law. These GTC shall not apply to business conducted with consumers within the meaning of § 13 of the *Bürgerliches Gesetzbuch* (the Civil Code, the "BGB").
3. These GTC shall govern exclusively. Any incorporation of any opposing or supplemental GTC, or any terms and conditions of the customer that deviate from our GTC, is hereby controverted. Nor shall such have any applicability even if we carry out the customer's delivery in knowledge of or without any express contravention of the customer's deviating terms and conditions.
4. Any individual agreements made with the customer in the individual case (including ancillary agreements, amendments, and restatements) shall in every instance take precedence over these GTC.
5. These GTC shall also apply to any future business transactions between WEPF and the customer, without requiring renewed integration.
6. Any rights, above and beyond these GTC, to which WEPF is entitled under the provisions of law or under other agreements, shall not be affected.
7. The regulatory provisions of these GTC shall be without prejudice to the allocation of the burden of proof under provisions of law.
8. If a provision of these GTC bears upon the written-form (*Schriftform*), then the written-form requirement (*Schriftformerfordernis*) shall be preserved under these provisions by use of the text-form (*Textform*) (§ 126b BGB).

II. RIGHTS IN OUR DOCUMENTS; PROMISES OF THE CUSTOMER

1. Offers, cost quotations, and other documents transmitted within the scope of negotiating an agreement shall remain our property and may be made available to third parties only with prior written consent.
2. All rights, including, but not limited to, patent rights, copyrights, and inventor rights, in documents, samples, devices, drawings, cost quotations, drafts, and plans created and/or compiled by us, shall be owned by us exclusively. They may be made accessible to third parties only insofar as we have issued our express consent for this purpose.
3. If we leave the above-described objects or documents with the customer, this does not constitute a transfer or granting of rights (license) to the customer.
4. The customer (i) assures that any documents made available to us by the customer do not violate any third-party rights, and (ii) shall indemnify us from any third-party claims based upon documents made available by the customer.
5. The customer vouches that documents made available by the customer, including, but not limited to, drawings, plans, etc., are true to measure, are suitable for directly determining the contractually owed performance, and conform to actual facts and circumstances.

III. CONTRACT FORMATION

1. Our offers are – insofar as nothing else expressly follows from them – subject to change and non-binding. Such shall apply even if we have left with the customer catalogs, technical documentation, or other product descriptions, even in electronic form.
2. The contract shall be formed via our order confirmation or, in the absence of an order confirmation by WEPF, by our rendering of performance.
3. We shall have the right to accept an order submitted to us by a customer via order confirmation within ten (10) business days of our receipt of said order.
4. The contract shall be entered into via our rendering of the performance, insofar as we have commenced the rendering of the performance within ten (10) business days of receipt of the customer's offer.

IV. CONTENTS OF THE CONTRACT; ADJUSTMENT OF THE PERFORMANCE OWED UNDER THE CONTRACT

1. The performance owed under the contract shall be determined under the agreement made, particularly the order confirmation.
2. The stipulation of a guarantee or the assumption of a procurement risk shall require the written-form (*Schriftform*) in order to be effective.
3. The performance owed under the contract shall be deemed free of defects to the extent that a third party cannot assert any claims against the customer in this regard within the territory of the Federal Republic of Germany. WEPF shall be liable for the release from third-party rights with regard to other countries only if we have confirmed such in writing.
4. Subsequent amendments or adjustments to the performance owed by WEPF shall be permissible, insofar as they are customary in the industry or technologically necessary and do not unreasonably burden the customer.

V. PERIOD FOR PERFORMANCE; SELF-SUPPLY PROVISIO; FORCE MAJEURE AND RIGHT OF WITHDRAWAL; PARTIAL DELIVERIES

1. Subject to a deviating provision in the individual case, the specifications for any time periods for the rendering of performance shall be approximate.
2. The clarification of all technical questions shall be required in order to trigger the commencement of a stipulated time period for rendering performance. The time period for rendering performance shall not begin to run before the customer has complied with his assistive duties in this regard.
3. A stipulated time period for rendering performance shall not commence in the event of a stipulated agreement to comply with a pre-performance duty (*Vorleistungspflicht*), e.g., rendering a down payment, before the customer has fulfilled its pre-performance duties.
4. WEPF shall reserve the right to suspend performance (*exceptio non adimpleti contractus*).

GENERAL TERMS AND CONDITIONS OF SALES AND DELIVERY (GTC)

Status: 1 August 2018



5. A stipulated time period for rendering performance is subject to the reservation of the complete and timely delivery and supply by our contracting partner (the self-supply proviso). Such shall not apply if it does unambiguously follow from the contractual agreement that we have taken over a procurement risk or that an unlimited indeterminate obligation in kind (*Gattungsschuld*) is present. Furthermore, our performance duty shall not be inapplicable on the basis of the self-supply proviso if, with regard to the performance to be rendered in relation to the customer, we (i) have not entered into any congruent hedging transaction (*Deckungsgeschäft*) with our suppliers or (ii) have ourselves culpably brought about the non-fulfillment of this congruent hedging transaction. WEPF shall inform the customer without undue delay insofar as performance of the congruent hedging transaction should not be available.
6. The time period for rendering performance shall be reasonably extended in the event of *force majeure*. Excepted from such shall be those instances in which the presence of a case of *force majeure* as well as its duration, does not exert any influence upon the time span of rendering performance. In assessing the reasonable extension of the time period for rendering performance, the duration of the hindrance and a reasonable restart time are to be taken into consideration. *Force majeure* shall also be deemed to include unforeseeable events as of the date of entering into the contract, such as shortages of energy and raw materials, strikes, lockouts, official measures, terrorist attacks, and war. WEPF shall inform the customer without undue delay about the presence of any *force majeure* and when, prospectively, the situation will come to an end. If the circumstance of *force majeure* continues without interruption for longer than three (3) months or if the delivery date, due to multiple circumstances of *force majeure*, is extended by more than four (4) months in total, then both the customer as well as WEPF shall have the right to withdraw from the contract. In the event of *force majeure*, the assertion of compensatory damages claims and any additional claims shall be precluded. The duty of counter-performance shall not apply, and partial payments already made shall be reimbursed. The provisions of this section shall apply *mutatis mutandis*, insofar as the circumstances occur with a subcontracted supplier (*Unterlieferant*) and have an effect on the delivery to WEPF.
7. Provisions governing cases of *force majeure* in para 6 shall not find applicability, if WEPF itself is responsible for the hindrance to performance.
8. We shall have the right to partial deliveries, insofar as such is not unreasonable for the customer. A partial delivery shall in particular not be unreasonable if the partial delivery is usable for the customer in accordance with intended use, (ii) delivery of the remaining goods order is ensured, and (iii) no significant additional expense or additional costs arise to the customer from the partial delivery.
9. Any claims for compensatory damages arising from non-adherence to the time period for rendering performance shall be determined by Part XI (liability).

VI. PASSAGE OF RISK; TRANSPORTATION

1. The risk of accidental destruction shall pass to the customer upon the transfer of the goods to the customer. Supplying the forwarder or a third

party designed by it shall be equated to transfer to the customer.

2. If the customer, the freight forwarder, or any third party appointed by it do not accept the goods already declared ready for dispatch at the date of dispatch, then the risk of accidental destruction shall pass to the customer as of the date of dispatch.
3. The customer alone shall be in charge of and responsible for loading and unloading in a manner secure both operationally and in terms of transportation. The customer shall indemnify us from any detriments and/or encumbrances, which arise with us as a result of the fact that the carrier used by the customer or at the customer's instruction violated rules and regulations under the *Güterkraftverkehrsgesetz* (the Road Haulage Act).
4. Any complaints due to damage incurred during transport shall have to be filed by the customer against the transportation company immediately, with copies to us within the special time periods provided for this purpose.

VII. ACCEPTANCE DEFAULT; DAMAGES ARISING DUE TO DELAY

1. If the customer does not accept the goods in a timely manner or if the customer enters into default in another manner, then for each commenced business day, the customer shall owe WEPF a sum in the amount of 0.1% of the order value affected, but up to a maximal total of 5% of the order value affected.
2. The right is reserved (i) to the customer to substantiate a smaller amount of damages, or even none at all, and (ii) to WEPF to substantiate greater damages.

VIII. PRICES, TERMS AND CONDITIONS OF PAYMENT

1. All prices shall be net, ex works, and are understood to be plus the respectively applicable statutory sales and value-added tax (*Umsatzsteuer*).
2. Any and all additional costs incurred, including, but not limited to, those for transacting payment, transportation, packaging, import and export duties, and fees, shall be borne by the customer.
3. Payments shall be due and payable strictly net within thirty (30) calendar days from the invoice date, subject to any deviating stipulation. Payment shall be rendered at the seat of WEPF. The costs and risk of payment shall be borne by the customer.
4. The acceptance of checks and bills of exchange shall require express stipulation thereto.

IX. COMPLAINTS OF DEFECTS

1. The customer shall be obligated to inspect without undue delay any goods taken into receipt for freedom from defects and to lodge complaint for any defects discovered on this occasion.
2. If a defect becomes manifest, which was not discernible in the course of the inspection pursuant to Sect. 1, then complaint of such is to be lodged without undue delay of actual discovery.
3. Complaints regarding any defects discovered are to be lodged with us in the written-form (*Schriftform*). The complaint shall have to be effected by providing a detailed description, by means of which the alleged causes and effects

GENERAL TERMS AND CONDITIONS OF SALES AND DELIVERY (GTC)

Status: 1 August 2018



are evident. Upon demand, appropriate documentation material, particularly photographs, are to be made available to us.

4. If the customer does not comply with its duty of inspection and complaint, then the performance shall be deemed approved, and the customer shall not be entitled to the warranty rights. Such shall not apply insofar as we have concealed the defect with malice or if the exclusion would be incompatible with the provisions of a written guarantee.
5. The customer shall be obligated to bear the expenses of WEPF associated with any unjustifiable complaints of defect culpably undertaken.
6. The time periods under Sects. 1 and 2 shall commence, insofar as documentation is owed by WEPF, only when the customer has received the documentation.

X. WARRANTY

1. Warranty claims arising from defects that are traceably the customer's improper handling or to the disregard of instructions for use shall be precluded.
2. Warranty claims shall be precluded insofar as these are traceable back to information made available by the customer, including, but not limited to, measurements, drawings, or plans. Any claims for breach of protective rights of third parties, insofar as the breach is traceable back to the customer's instructions, are precluded.
3. WEPF shall render subsequent performance by means of subsequent improvement (repair) or subsequent delivery (delivery of a defect-free item). The selection of the type of subsequent performance shall be at the discretion of WEPF.
4. WEPF shall have the right to conduct subsequent performance within a reasonable time period.
5. Any expenses relating to subsequent performance shall be assumed by WEPF upon the basis of provisions of law.
6. Additional expenditures of the subsequent performance that arise because the goods are removed to a location other than the original location of use, shall not be assumed by WEPF. This provision shall not apply if the goods were removed to a location other than the original location of use in accordance with intended use.
7. The foregoing shall be without prejudice to WEPF's right to refuse the subsequent performance, in whole or in part, in the event that the statutory prerequisites are met.
8. Any parts replaced in the course of the subsequent performance shall become the property of WEPF and are to be surrendered to us.
9. Any warranty claims based upon defects – with the exception of compensatory damages claims – shall, in derogation of § 438 para. 1 no. 3 BGB – lapse within twelve (12) months of the passage of risk. This provision shall not apply in the event of maliciously concealed defects or other compulsory provisions of law.
10. Part XI (liability) shall also apply to the assertion of compensatory damages.
11. The foregoing shall be without prejudice to the statutory rules and regulations as to the recourse of the customer as an entrepreneur in the case of a consumer goods purchase (§ 478 BGB) as well as within the supply chain according to §§ 445a and 445b BGB.

XI. LIABILITY

1. WEPF shall be liable under the provisions of law for all injury to life, limb, or health in the event of any culpable breach of duty.
2. WEPF shall be liable under the provisions of law in the event of culpable breach of material contractual duties. However, any liability shall be limited to foreseeable, contractually typical damages, if WEPF has not breached material contractual duties maliciously or with gross negligence. 'Contractually material duties' are such duties (i) which are compulsorily required in order to achieve the purpose associated with the contract and (ii) upon the compliance with which the customer may rely.
3. WEPF shall be liable for grossly negligent and malicious breach of non-material contractual duties.
4. WEPF shall be liable in accordance with the provisions of the *Produkthaftungsgesetz* (the Product Liability Act).
5. In the event a contractual warranty is stipulated, WEPF shall be liable in accordance with the warranty declaration.
6. Any liability apart therefrom shall be precluded.
7. To the extent that our liability based upon the foregoing sections is limited or precluded, such shall also apply to the liability of our legal representatives and vicarious agents, including our employees and workers.

XII. SUPPORT IN CASES OF PRODUCTS LIABILITY

1. The customer shall not modify the products with respect to issues relevant to safety. In particular, the customer shall not modify or remove existing warnings concerning dangers of improper use. In the event of any breach of this duty, the customer shall indemnify WEPF *inter se* from any product liability claims of third parties, unless the customer is not responsible for the error triggering liability.
2. If WEPF is obligated to introduce measures, including, but not limited to, those concerning product warnings or product recalls, then the customer shall support WEPF using its best efforts.
3. The customer shall inform WEPF in the written form (*Schriftform*) without undue delay about any risks of which the customer becomes aware.

XIII. SETOFF, RIGHT OF RETENTION

1. Setoff by the customer shall be permissible only in the event of undisputed or judicially determined receivables.
2. Sect. 1 shall apply to *mutatis mutandis* to the exercise of any right of retention.

XIV. ASSIGNMENT PROHIBITION

1. The customer shall be able to transfer to third parties, in whole or in part, rights and duties arising from the contractual agreement only after our prior written consent.
2. Sect. 1 shall not apply to the assignment of receivables for payment within the meaning of § 354a of the *Handelsgesetzbuch* (the Commercial Code).

GENERAL TERMS AND CONDITIONS OF SALES AND DELIVERY (GTC)

Status: 1 August 2018



XV. OWNERSHIP PROVISIO

1. Goods delivered by us shall remain our property (proviso goods) until the complete payment of all receivables arising from the business relationship. The customer shall have the right to dispose of the proviso goods in the ordinary course of business. With current accounts, the proviso property shall serve as security for current account balance claims inuring to the benefit of WEPF.
2. Upon WEPF's demand, the customer shall be obligated to reasonably insure the proviso goods at the customer's own expense.
3. The processing or alteration of the proviso goods by the customer shall always be effected for WEPF. If proviso goods are processed with other objects not belonging to WEPF into a new item, then WEPF shall acquire joint title in the new item. The proportion of title jointly held shall be measured in accordance with the value of the proviso goods in relation to the value of the other objects processed or altered as of the date of the processing or alteration.
4. If a connection or commingling of the proviso goods is effected by the customer, rendering such into a unified item, and if one of the other objects is to be regarded as the primary item, then WEPF shall be entitled to proportional title in the item coming into existence. The proportion of joint title shall be measured in accordance with the value of the proviso goods in relation to the value of the other objects connected or commingled as of the date of the connection or commingling. The customer herewith assigns any joint title to WEPF, whereby WEPF hereby accepts this assignment.
5. Any receivables against third parties arising from the resale of proviso goods shall be deemed as assigned to WEPF for security by the customer with all ancillary rights as of the present date. WEPF accepts this assignment. The customer shall be obligated to reserve title in the goods vis-à-vis its purchasers until complete payment of the purchase price.
WEPF shall be empowered to collect, for WEPF's account, the resulting purchase price receivables until revocation or until settlement (*Einstellung*) of payment to WEPF. The customer shall not be authorized to assign this receivable. WEPF shall revoke the collection authorization only if the customer is in payment default or if an application is lodged to initiate bankruptcy proceedings over the assets of the customer. In the event of the revocation of the collection authorization, the customer shall have to transmit to WEPF the details necessary to collect on the receivable, by submission of (i) the corresponding delivery agreements with its purchasers, (ii) the invoices, and (iii) an overview of the payments by the purchasers to the customer.
6. The customer shall have to (i) inform WEPF in the text-form (*Textform*) without undue delay about any access (*Zugriff*) of third parties to goods in which WEPF has title, including, but not limited to, measures of compulsory execution on the proviso goods and the receivables of WEPF, and (ii) relay to WEPF without undue delay any information and documents necessary for defense.
7. To the extent that the realizable value of the security interests to which WEPF is entitled exceeds all of the as of yet unpaid receivables vis-à-vis the customer to WEPF by more than 10%, upon the customer's demand WEPF shall be ob-

ligated to release the security interests. WEPF shall be entitled to select the security interests to be released.

8. The customer shall be obligated to report to us in advance any intended delivery of the proviso goods internationally, insofar as hereby, any deleterious impact upon the justifiable interests of WEPF is to be feared. The foregoing shall apply in particular if, due to the applicable legal system in the receiving country or in a transit country, the security interests to which WEPF is entitled disadvantageously deviate from the above provisions. WEPF shall not refuse consent to delivery internationally, insofar as security funds of an economically equal value are made available to WEPF by way of a substitution.

XVI. JURISDICTION, APPLICABLE LAW

1. The exclusive place of jurisdiction shall be court competent for the seat of WEPF in Ehingen, Germany. The foregoing shall not apply insofar as the customer in fact is a /business enterprise (*Unternehmer*), but not a merchant (*Kaufmann*), a legal person under public law, or an investment fund (*Sondervermögen*) under public law.
2. WEPF shall have the right – over and above Sect. 1 – to bring suit against the customer at its place of general jurisdiction (*allgemeiner Gerichtsstand*).
3. The law of the Federal Republic of Germany shall apply to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

XVII. WRITTEN-FORM (*SCHRIFTFORM*)

Any and all amendments to and restatements of these GTC, as well as any waiver of their applicability, shall require the written-form (*Schriftform*). The foregoing shall also apply with regard to any possible waiver of this written-form requirement (*Schriftformerfordernis*).

XVIII. SEVERABILITY CLAUSE

1. Should one or several provisions of these GTC, or parts of a provision, be ineffective, then such ineffectiveness shall be without prejudice to the effectiveness of the remaining provisions or to the contract as a whole.
2. However, having regard to the case-law of the Bundesgerichtshof, according to which a severability clause merely results in a reversal of the burden of proof, it is the express intention of the parties to maintain the validity of the remaining provisions of these GTC in all circumstances.
3. Sect. 1 and 2 shall apply *mutatis mutandis* in the event of any loopholes.