

General terms and conditions

1. General

These Terms and Conditions shall take precedence over all other agreements, correspondence, phone calls, and/or deviating terms and conditions of business and/or purchase of the business partner (hereinafter: Buyer) unless the latter has been accepted in writing by Waldner AG (hereinafter: Seller). Amendments to these terms and conditions must be made in writing.

2. Contract

The purchase contract is concluded by the written order, the written confirmation of the order, the contract signed by both parties. As long as the offer from the Seller has not been confirmed in writing, it remains non-binding.

Obvious errors in the offer or in the order confirmation as well as spelling and calculation errors shall neither entitle nor obligate the Buyer or the Seller. The contract shall only be concluded as it would have been concluded without these errors and/or mistakes.

All changes and/or additions to the confirmed order/contract must be made in writing. Technical changes on the part of the Seller are possible at any time without special notice.

Offer documents, drawings, descriptions, samples, and cost estimates as well as all other supplies produced by the Seller, may not be made accessible to third parties. Upon request, these documents (as well as any copies) must be promptly returned to the Seller with written confirmation of completeness from the Buyer.

3. Assembly Conditions

Certain prerequisites must be fulfilled by the Buyer on the construction site before the planned assembly start, which the Seller requests on time with the "Site Approval before Assembly Start" checklist. The smooth progress of the assembly can only be ensured without on-site hindrances or timely fulfillment of the pre-agreed conditions.

Unfilled or inaccurately filled items on the checklist affect the completion date. The agreed-upon deadlines become void, and rescheduling incurs additional costs, which may be invoiced to the Buyer based on actual expenses.

All costs arising from non-compliance with the assembly conditions, such as the withdrawal of assembly personnel, travel expenses, accommodation for personnel, material storage, extension of bank guarantees, as well as further delays and waiting times, will be invoiced to the Buyer based on actual expenses.

4. Delivery deadlines

The Seller shall comply with the agreed delivery periods as far as possible. Compliance with delivery deadlines is not guaranteed.

The delivery deadline shall be extended accordingly:

- a) if the Seller does not receive the information required for the fulfillment of the contract in a timely manner, or if the Buyer subsequently modifies it, causing a delay in deliveries or services.
- b) if obstacles arise that the Seller cannot avoid despite exercising due diligence, whether they occur at the Seller's, Buyer's, or a third party's premises. Such obstacles include, for example, epidemics and pandemics, mobilization, war, riots, significant operational disruptions, accidents, transportation interruptions, labor disputes, delayed or faulty supply of necessary raw materials, semi-finished or finished products, government actions or omissions, and natural events.
- c) if the Buyer or third parties, such as auxiliary personnel, are behind schedule with the work they are supposed to carry out

or in fulfilling their contractual obligations, especially if the Buyer does not adhere to the payment terms.

If the delivery is delayed for reasons attributable to the Seller, the Buyer must set a reasonable grace period. If delivery occurs within this grace period, the Buyer is not entitled to compensation for delay.

If the delivery is delayed due to circumstances for which the Seller is responsible, the Buyer is entitled to be compensated, to terminate the contract, to withdraw from the contract, or to refuse acceptance of the goods, even if the delivery did not occur after the specified grace period.

If the Buyer is provided with a substitute delivery and accepts it, the claims for compensation for delay and damages, and the right to withdraw from the contract are waived.

If the delivery is delayed due to reasons attributable to the Buyer (see Article 3), the Seller can withdraw from the contract and demand full compensation.

5. Shipping

Delivery is at the expense and risk of the Buyer. The price risk is transferred to the Buyer at the latest at the time of dispatch. The risk of accidental loss or deterioration of the purchased item transfers to the Buyer as soon as the purchased item is handed over to a third party for shipping. If the Seller handles the shipment themselves, they shall bear the risk of accidental loss or deterioration of the purchased item. However, the responsibility for the price risk lies with the Buyer, independent of the shipper.

The ordinary insurance coverage according to legal or contractual provisions is ensured by the Seller. Additional insurance beyond this scope is only arranged by the Seller upon explicit request and at the expense of the Buyer.

If the Buyer does not accept the ordered and delivered goods, the storage of the non-accepted goods shall be at the expense and risk of the Buyer.

6. Warranty

The warranty for material defects and defects of title in the purchased item is excluded to the extent permitted by law and subject to the following concretizations. Deviating agreements are possible by mutual contract.

The Buyer primarily has the right to rectification. The right to rescission shall only exist in the event of the impossibility of rectification or in the event of an unjustified refusal by the Seller to rectify the defect.

The period for giving notice of defects shall be seven (7) days; calculated from the date of receipt of the goods for obvious defects or from the date of discovery of the defect in the case of hidden defects. The relevant date shall be included in the calculation of the period. Notices of defects must be made in writing. The Buyer bears the burden of proof for any defects.

The Seller guarantees rectification for a reasonable period, but no longer than six (6) months, calculated from the time of receiving the goods or the acceptance, and subject to a timely defect notification, as follows: The Seller will repair or replace, at their own cost, the goods or parts of the goods that become faulty or unusable during the specified warranty period due to faulty design, poor material, or poor execution.

If the shipment or assembly of an ordered item is delayed without the fault of the Seller, the warranty obligation expires in any case twelve (12) months after the Seller notifies the completion.

The Seller's warranty obligation is completely extinguished if the Buyer or third parties, without the written consent of the Seller, perform or commission maintenance, modifications, or repairs.

Also excluded from the warranty are: Natural wear and tear, damage as a result of incorrect maneuvering, incorrect or negligent handling, failure to observe the operating and handling instructions, excessive stress, rusting due to chemical or electrolytic influences or similar, as well as damage because of exceeding the agreed operating values.

Subject to prior agreement, the damaged goods are to be sent by the Buyer, at their own expense and risk, to the Seller's headquarters in CH-8732 Neuhaus. The return of the repaired goods shall also be at the expense and risk of the Buyer.

The lodging of notifications or claims for rectification of defects by the Buyer does not exempt the Buyer from their obligation to make timely payments.

7. Liability

The Seller shall be liable exclusively for direct damage caused by gross negligence or intentionality. Liability for indirect damage (such as loss of profit) and for damage to non-contractual goods is excluded.

8. Reservation of ownership

The delivered goods remain the property of the Seller until the Buyer has made full payment. Upon acceptance of the delivery, the Buyer authorizes the Seller to register the retention of title according to Article 715 Paragraph 1 of the Swiss Civil Code (ZGB). The Buyer will, at their own expense, maintain the delivered items during the period of retention of title and insure them in favor of the Seller against theft, breakage, fire, water, and other risks.

9. Subsequent amendments

If the documents provided by the Buyer to the Seller do not correspond to the actual circumstances, or if circumstances that would have required different materials or a different design were brought to the Seller's attention late or not at all, the costs for any necessary changes that arise, including but not limited to additional costs for manufacturing, delivery, and assembly, shall be borne in full by the Buyer.

The Seller is also entitled to a reasonable extension of the contractual deadlines for any resulting delays or disruptions in the construction process.

10. Terms of payment

Unless otherwise agreed, payment shall be made in the following installments: 30% of the purchase price is due after contract conclusion/order placement. Another 30% will be invoiced upon readiness for delivery and assembly. The remaining 10% is due after acceptance/final invoice. These partial payments must be made within 30 days net of the invoice date without deduction. If no installment payments are agreed upon, the total amount is due within 30 days net of the invoice date without deduction. If the Buyer fails to meet the payment deadline or agreed-upon payment dates, they will be in default without a reminder, subject to other payment conditions as per a validly issued quotation. The default interest rate is 5% per annum. The Seller's claim to interest on arrears exists independently of and in addition to any further claims for damages in connection with the default.

11. Termination (Retreat in Case of Debtor's Default)

The Seller is entitled to terminate all agreements with the Buyer immediate and unconditional if the Buyer fails to make agreed-upon payments within the specified payment period and allows a grace period set by the Seller to expire unused.

If the Buyer violates the contractually agreed-upon obligation to provide securities (such as cash or performance guarantees, etc.), this breach releases the Seller from their contractual obligations.

The assertion of claims for compensation for damages arising from the termination of the contract is reserved.

Other grounds for termination include the breach of the obligation to prepare the assembly site on the part of the Buyer (see Article 3), refusal by the Buyer to accept the delivery from the Seller in accordance with the order/contract, and the present General Terms and Conditions, a significant deterioration in the Buyer's creditworthiness, or the initiation of insolvency or bankruptcy proceedings against the Buyer.

12. Intellectual property

Unless otherwise agreed, the Buyer shall not acquire any ownership rights to drawings, software, plans, documents, and the like that may have been made available to him. Furthermore, the Seller shall remain the sole owner of all intellectual property rights or industrial property rights to goods delivered or services rendered.

If the delivered products include software, the Buyer is granted a non-transferable and simple license for the free use or operation of the software. No license rights are granted for third-party maintenance after the expiration of the warranty period. The software and the related documentation are subject to copyright or other intellectual property rights owned by the Seller or those of the respective licensor.

In using the Seller's products, the Buyer warrants that the copyright or other intellectual property rights in the software and user documentation provided will not be infringed.

If the Buyer provides the Seller with a plan, document, or any other copyrighted work product that infringes the copyright or other intellectual property rights of another person, the Buyer must indemnify the Seller against all claims from the rightful owner and provide support in any potential legal proceedings.

13. Data Protection

Regarding data protection regulations (CH-DSG and EU-DSGVO), reference is made to the binding content of the current privacy policy on the Seller's website.

14. Use of Media and Information for Reference Purposes

Unless otherwise agreed, the Seller is permitted to take photos and videos of reference projects and publish them for reference purposes on digital media such as print, social media, and online channels of their choice. The Buyer is willing to provide reference information if requested by the Seller.

15. Governing law and place of jurisdiction

The place of jurisdiction for any disputes arising from and in connection with this purchase contract is the statutory seat of the Seller. Swiss law shall be applicable. The application of the Vienna Sales Convention (CISG) is excluded.

16. Effective Date

This version of the General Terms and Conditions comes into effect on January 1, 2024, replacing all previous versions.

Waldner AG
As of 2024