

General Sales and Delivery Terms and Conditions of the Wente/Thiedig GmbH, 2017

I. Area of Application

These General Sales and Delivery Terms and Conditions are valid for all – even future – offers, contractual relationships, deliveries and other services between Wente/Thiedig GmbH (“**Seller**”) and the “**Buyer**”, provided that the latter is a company, legal person under public law or a public special estate. Any of Buyer’s divergent conditions which are not expressly accepted in writing are not binding, even if Seller performs a contract without expressly objecting to such conditions.

II. Offer and Granting of Orders

1. Seller’s offers are always non-binding and subject to confirmation. The contract is not executed until Seller confirms acceptance of the order in writing or performs delivery. The written order confirmation of Seller is authoritative with respect to the scope of delivery. All agreements are to be recorded in writing; this also applies to supplements, modifications and subsidiary agreements. Seller reserves the right to correct mistakes in offers, order confirmations and invoices.

2. **Written communications from Seller are considered to be received by Buyer, following the standard transmission time, when they were sent to the last address, fax number or e-mail address known to Seller, and Seller can verify this fact. Declarations of particular importance, especially terminations, cancellations and setting of extension periods, are exempt from this assumption of receipt.**

3. **As part of the business relationship with Buyer, Seller will store personal data to the extent necessary to perform the contracts and maintain the professional relationship.**

III. Prices

1. In the absence of special agreement, the prices are quoted ex-works, including loading at the works but excluding freight, packaging, and the applicable value-added tax.

2. For international deliveries, Buyer is to assume all costs and outlays connected with the border-crossing, including import/export fees and customs, regardless of whether or not Buyer initially covers the costs.

IV. Payment Terms, Delay, Offset

1. All invoices are immediately payable (due) in full as they are received. From 30 days after the due date, Seller adds late interest in the amount of eight percentage points over the prevailing prime rate of the European Central Bank. Seller reserves the right to verify any interest disadvantage beyond the above rate.

2. Payment instructions and checks are only accepted with special written agreement and only for the purpose of payment, taking into account all discount and collection costs.

3. Buyer’s right to determine which obligations are fulfilled by Buyer’s payment is waived in favour of the statutory amortisation provision of 367 Para. 1 BGB (German Civil Code).

4. If Buyer delays providing any agreed partial payments, Seller may immediately demand payment of the entire balance.

5. If Buyer is delayed in making payment, Seller can revoke the contract and, following fruitless expiration of a reasonable period, demand damages instead of performance.

6. Buyer can only offset or assert a right of retention against Seller if his counterclaim has legal force or is uncontested.

V. Delivery and Delivery Periods

1. The right to deliver commercially and materially standard deviations in quality, construction and colour is reserved. Even non-commercially standard design and form modifications are permitted to Seller, unless the modification or deviation is not reasonable for Buyer in the individual instance.

2. Delivery dates or periods are to be specified in writing. If they are to be binding, then the binding nature is also to be agreed in writing. Delivery periods begin with the date of the order confirmation, but not before Buyer provides any necessary documents, approvals or authorisations, or before receipt of an agreed deposit in individual cases. The punctuality of the delivery is defined by the time at which the goods are handed over to the shipper or loaded onto a vehicle of Seller, or by the time of readiness for shipment in the event that the shipment or provision of the goods was delayed by circumstances for which Buyer is responsible. If an acceptance test is to be performed, the date of the test is authoritative – except in the

event of justified refusal to accept – supported by the communication of the readiness for acceptance. **Subsequent modifications to the contract agreed to upon Buyer’s initiative and influencing the delivery time extend the delivery time accordingly.**

3. **Seller’s delivery obligation is subject to the correct, punctual supply of material necessary for delivery, unless Seller is at fault for the non-punctual or late supply of such material.**

4. **Seller is always authorised to provide commercially standard partial deliveries or services, unless such partial delivery or service is unreasonable for Buyer. Industry-standard over- and under-deliveries of the agreed quantity are permissible.**

5. **Seller is not responsible for disruptions in Seller’s normal business operation, especially due to illness-related absence of managing staff, strikes, lock-outs, insufficient number of employees – also on the part of supplier or manufacturer companies – insufficient shipping options and raw-material procurement, and force majeure. In such cases, the delivery times are extended by the duration of the disruptions caused by such circumstances. Seller is obligated to inform Buyer of the start and projected as well as actual end of such obstacles as described above as soon as possible.**

6. Seller is also not responsible for the circumstances named above when they arise during an already existing delay.

7. **If delivery is not punctual, Buyer is to provide Seller with an extension of at least fourteen days. All of Buyer’s warnings and deadlines must be in writing to be effective. If the goods are not reported as ready for shipment after expiration of Buyer’s deadline, Buyer is entitled to revoke or otherwise cancel the contract, if he provided notice of this consequence of fruitless expiration in writing together with the setting of the deadline. Extended liability on the part of Seller under § 287 BGB is precluded.**

VI. Retention of Ownership

1. Seller retains ownership of the respective delivery object until the complete fulfilment of all obligations of the business relationship, including future obligations arising out of contracts executed with Buyer at the same time or later.

2. Seller is entitled to insure the delivery object at Buyer’s expense against theft, breakage, fire, water and other damages, provided that Buyer has not verifiably provided such insurance himself.

3. Buyer may neither alienate, pledge nor transfer the delivery object as security.

4. If Buyer delays providing payment, Seller is entitled to demand the provisional return of the shipped goods at Buyer’s expense, without exercising the right of revocation or granting an extension.

5. If third parties access the goods or other securities subject to the ownership retention, especially as part of a compulsory execution, Buyer shall identify the property of Seller and immediately notify Seller of the impending, imminent or already occurred access of third parties and transfer the documents necessary for intervention. This also applies to damnification of any type, for which Buyer assumes the costs.

6. Seller is obligated, upon Buyer’s request, to release the securities accruing to him to the extent that the realisable value of the securities exceeds the obligations to be secured by more than 10 % or the nominal amount by more than 50 %; Seller is entitled to select the securities to be released.

7. If Buyer plans to transport the delivered goods outside of the country, he shall immediately notify Seller of such plans in writing. Upon Seller’s request, Buyer is to grant him a security right that approximates the above-described retention of ownership according to the laws of the destination country. Buyer is to take whatever measures necessary to justify and maintain such rights.

VII. Transfer of Risk

1. Risk transfers to Buyer when the goods are handed over to the transport agent, shipping agent or freight agent, or loaded onto a vehicle of Seller, but in no event later than when they leave the factory or warehouse. This also applies in the event of partial deliveries or when Seller has assumed other obligations, such as shipping costs or transport. Seller shall only insure the goods against loss or damage during transport if requested by and at the expense of Buyer. If an acceptance test is to be performed, then it is authoritative for the risk transfer. It must be performed punctually as scheduled, preferably after Seller

communicates the readiness for acceptance testing. The presence of an insignificant defect does not give Buyer grounds to refuse acceptance.

2. If shipment is delayed due to circumstances for which Buyer is responsible, the risk transfers to Buyer at the time the readiness to ship or pick up is communicated.
3. Goods communicated as ready to be sent in compliance with the contract must be accepted immediately; otherwise Seller is entitled, after warning Buyer, at his own discretion either to send or to store the goods at Buyer's expense and to invoice them immediately.
4. If, due to no fault of Seller, transport to the provided place at the provided time using the provided method is impossible, Seller is entitled to delivery to another place or to use another method, and Buyer assumes any additional costs. Buyer is first to be given opportunity to express his opinion.
5. In the event of transport damages, Buyer is immediately to record the facts with the appropriate authorities and to notify Seller in writing.
6. Buyer is to accept delivered goods irrespective of his rights under Section XI, even if they contain insignificant defects.

VIII. Inspection and Reapproval Obligation

1. Buyer is to report defects in the goods immediately, no later than seven days after receipt, in writing. Concealed defects which cannot be found within the above-mentioned period even after the most careful inspection are to be reported to Seller immediately after they occur, and all operation/processing is to be stopped.
2. Buyer's reapprovals must be made in writing and must precisely describe the defect. The deficient objects are to be kept ready for viewing by Seller in their condition as at the time the defect was detected.

IX. Insufficient Performance Capability of Buyer

1. If, after execution of the contract, Seller has reason to believe that his expectation of counter-performance is endangered by Buyer's insufficient capability to perform, he may refuse his own performance, unless Buyer complies with Seller's demand to provide satisfactory assurance within a reasonable time.
2. If Buyer does not satisfy Seller's justifiable demand or does not do so within a reasonable time, Seller may cancel the contract and demand damages instead of performance.
3. ***If Buyer delays performance due to a significant weakening of his capabilities, Seller may cancel the contract effective immediately and demand damages instead of performance.***

X. Intellectual Property Rights

1. Cost estimates, drafts, drawings and other documents remain the property of Seller. The comprehensive copyright with all associated rights to all documents and information transferred during the contractual relationship belongs exclusively to Seller, even if these objects were created based on specifications or assistance from Buyer. Such objects may only be made accessible to third parties with the consent of Seller. Drawings and other documents associated with the offers are to be returned immediately upon request or if the order is not granted.
2. ***If the production of goods based on drawings, samples or other information from Buyer violates the intellectual property rights of third parties, then Buyer is obligated to release Seller from all claims. Seller is not obligated to post-check the above-mentioned documents, not even with respect to existing commercial intellectual property rights of third parties.***

XI. Warranty

1. Seller warrants the agreed quality of the goods he delivers in accordance with applicable commercial laws and the terms below provided that Buyer reports justified, timely reapproval based on defects as described in Section VIII.
2. If defects are verified, Seller fulfils the warranty obligation by, as he chooses, either supplying Buyer with new, defect-free goods (replacement) or eliminating the defect (improvement). In the event of improvement, Buyer is, upon Seller's request, to precisely describe defects and submit written defect reports and other data suitable for analysing the defect. Seller assumes the cost of improvement, provided that such cost is not increased due to the fact that the delivery object was brought to a different place than provided for in the contract after delivery. If title defects are verified, Seller fulfils his warranty obligation of replacement by providing Buyer with a legally flawless opportunity to use the delivered goods or, at Seller's discretion, supplying exchanged or modified goods of the same value.

3. If the subsequent performance described in the above paragraph is not successful, Buyer may revoke the contract or reduce payment. A prerequisite is the fruitless expiration of a reasonable period set in writing, unless the granting of an extension period is not required by law. In the event of revocation, Buyer is liable for decrease in value, damage and possible usage due to its own or any other standard of care.
4. Seller shall provide damages or compensation for futile expenditures due to a defect within the boundaries defined in Section XII.
5. The limitations period for claims under Paras. 1 through 5 in the event of title defects existing in an in rem right of a third party, on the basis of which the third party can demand return of the item, is 10 years, and 1 year for all other defects. The limitations period begins with delivery of the item.
6. If a third party asserts claims which oppose the exercise of the usufruct contractually granted to Buyer, Buyer is to notify Seller immediately and comprehensively in writing. Buyer now authorises Seller to conduct the dispute with the third party alone in judicial or extra-judicial proceedings. If Seller makes use of this authorisation at his discretion, Buyer may not recognise the claims of the third party without the consent of Seller. Seller is obligated to defend the claims at his own expense and to release Buyer from all costs and damages associated with the defence, provided they are not based on Buyer's failure to perform obligations. The provisions of this paragraph apply independently of the expiration of the limitations period defined in Point 5.
7. Seller's statements regarding the composition and quality of the goods do not represent a guarantee of such composition and quality unless the parties expressly so agree. In this case, Buyer's rights are defined by Seller's declaration of guarantee. Buyer must assert rights from the guarantee declaration against Seller in writing within two months after the occurrence of the event claimed under guarantee (exclusionary limit).
8. Seller has no obligation to advise Buyer in connection with the delivered goods. Any consultation provided anyway is non-binding; Point 7 applies accordingly.

XII. Liability

1. In all cases of contractual or extra-contractual liability, Seller provides damages or compensation for futile expenditures only:
 - a. In the event of intent or gross negligence in the full amount; in the event of intent or gross negligence on the part of agents, Seller is liable only in the amount of the typically foreseeable damage to be prevented by the unperformed obligation.
 - b. In other cases: Only if Seller, his managing employees or agents fail to perform an essential duty and thus endanger the object of the contract, but liability is always restricted to EURO 25,000 per event or EURO 50,000 total from the contract, unless this amount is unreasonably low in the individual case; in the event of negligent failure to perform a duty, Seller is liable to Buyer only in the amount of the typically foreseeable damage to be prevented by the unperformed obligation.
 - c. In addition: If Seller is insured against the damages which occurred, liability is restricted to the amount of insurance coverage and temporally subject to the insurance payment.
2. Seller retains the defence of contributory negligence on the part of Buyer. The limitations of liability in Point 1 do not apply to damages due to injury or death, to the assumption of quality guarantees or to the malicious concealment of a defect. They also do not apply to liability under the product-liability law.
3. A limitations period of one year applies to all claims against Seller for damages or compensation for futile expenditures under contractual or extra-contractual liability – except in cases of intent or personal injury. This does not apply to an item that was used in its usual way for a structure and caused defects in such structure. The limitations period begins with the time defined in § 199 Para. 1 BGB. It expires no later than the expiration of the maximum periods defined in § 199 Paras. 2 through 4 BGB. The divergent limitations period for claims due to property and title defects (Section XI, Point 5) remains unaffected by the provisions of this paragraph.
4. The tolling of the limitations period for claims in connection with the contractual relationships between the parties under § 203 BGB ends at the time at which Seller or Buyer refuses to continue the negotiations concerning the claim or the circumstances underlying the claim. If one of the parties does not expressly declare the failure of the negotiations in writing, the continuation of the negotiations is considered to be refused six months after the sending of the last correspondence whose object was the claim or the circumstances underlying the claim.

XIII. Place of Performance, Venue, Applicable Law

1. The place of fulfilment for obligations arising from the contractual relationship is the place of the delivery factory or warehouse of supplier. Braunschweig, Germany is the exclusive venue for any and all legal disputes, including check or title disputes.
2. The contractual relationship is governed by non-unified German law, especially the BGB and HGB (German Commercial Code). The provisions of the Vienna UN Convention of 11 April 1980 concerning contracts for the international sale of goods (CISG) are not applicable.

XIV. Concluding Provisions

1. Previous Sales and Delivery Terms and Conditions of Seller are hereby rendered ineffective.
8. If one or more provisions of these Terms and Conditions are totally or partially ineffective or unenforceable, the effectiveness and enforceability of all other provisions of these Terms and Conditions remain unaffected.