

General conditions of sale of the winkler Group (DE)

1. General

- (1) All deliveries shall be provided on the basis of the following general conditions of sale. They apply to all contracts concluded by us with our customers. All offers and agreements are based on these conditions and they shall be deemed accepted by placing an order or accepting the delivery for the duration of the entire business relationship. Deviating conditions that are not expressly recognized by us in writing are not binding on us as the seller, even if they have not been explicitly contradicted.
- (2) No verbal arrangements have been made outside of this contract.
- (3) A "user" is, in the sense of the following provisions and in accordance with § 13 BGB (German Civil Code), each natural person who concludes a legal transaction for a purpose which cannot be included in his commercial nor stand-alone professional activity.
- (4) An "entrepreneur" is, in accordance with § 14 BGB, a legal entity, corporate entity, or legal partnership vested with the legal capacity to conclude a legal transaction in the performance of their commercial or independent professional activity.
- (5) The provisions of the general conditions of sale apply – unless otherwise expressly stated – to both users as well as entrepreneurs.

2. Offer and conclusion of contract

- (1) The presentation of our goods in any form represents a non-binding offer unless otherwise expressly characterized by us as a binding offer. The offer is only made binding upon ordering by the buyer in accordance with § 145 BGB. If we do not provide a confirmation to the order in text form, then the contract goes into effect at the latest with our delivery within the acceptance period.
- (2) Our order confirmation is decisive for the method and scope of delivery. We are entitled to partial performances to a reasonable extent. Quotations are only binding if they have been expressly characterized by us as binding. We reserve the right to exceed the quotation of the estimated contract value up to 15 % for necessary works without giving prior notice to the buyer.
- (3) The goods ordered via our website are delivered in the versions, dimensions, weights, colors and minimum quantities listed in our online shop. Information in our online shop also do not represent any guarantee whatsoever. We reserve the right to make modifications in terms of technical progress or modifications related to changed legal regulations during the term of delivery as long as the delivery item is not changed significantly and the modifications are reasonable for the buyer. The same also applies to all other orders for information on our website, in our catalogs and in our advertising.
- (4) We reserve the right to deviate from the order confirmation of the goods if the ordered goods are no longer available from us.

3. Prices – Payment terms

- (1) The prices listed in our online shop and for other orders listed in the order confirmation are valid ex works (unless otherwise expressly stated). For contracts with an agreed term of delivery of more than four months we reserve the right to increase prices according to the increases in costs incurred due to collective wage agreements or increases in the price of materials. If the increase is more than 5 % of the agreed price, the buyer is entitled to terminate the contract.
- (2) The shipment and packaging costs incurred depend on the type of shipment selected by the customer and are listed within the scope of the online order and/or for other orders in the order confirmation. These costs are invoiced separately by us as well as listed separately. Delivery schedules and delivery deadlines are only binding if they have been confirmed in writing by us.
- (3) Our invoices are to be paid net within 14 days after the invoice date.
- (4) In the case of an agreed payment by direct debit, a direct debit notice period of at least 2 days is agreed, which is fulfilled with a collection notification on the invoice.
- (5) With the expiration of the term of payment, the buyer is automatically in default without any additional notice. If the buyer is a user in terms of § 13 BGB, then the legal provisions apply. The right to claim further damages remains unaffected.
- (6) The buyer is only entitled to offset against our claims if his counter-claim is beyond controversy or if he has a legally binding title at hand; he can only assert a right of retention if it is based on claims relating to the purchase contract.

4. Delivery

- (1) The delivery times/schedules provided by us are approximate information, unless otherwise explicitly agreed in writing.
- (2) The delivery deadline is considered met when we transfer the shipment to the transport agent or it has left our factory for the purpose of dispatch; in the case of a consumer goods purchase the deadline is considered met with transfer to the buyer and/or attempted transfer to the buyer at a time for which the buyer expected the transfer.
- (3) All force majeure events as well as all events for which we are not responsible release us from the fulfillment of our contractual obligations for the duration of the said events. We are obligated to inform the buyer immediately in writing when such an event occurs; we are also obligated to keep the buyer informed regarding how long such an event will probably last.

- (4) We are entitled to make partial deliveries; they are regarded as an individual business transaction.

5. Shipment

- (1) In case of dispatch, the risk shall pass to the buyer when the goods are transferred to the transport agent or when the goods have left our warehouse for the purpose of dispatch. The aforementioned provisions do not apply if the buyer is a user in terms of § 13 BGB. In the case of a consumer goods purchase, the risk is transferred to the buyer.
- (2) Unless the buyer otherwise provides express instructions, we will determine the method of shipment at our discretion. We will provide no warranty for the most cost-effective or secure method.
- (3) Only packaging not required for system participation will be taken back according to the Packaging Law. Exceptions to this are contaminated filling material; this must be disposed of at central collection points. The location of the return – unless otherwise agreed - is the location of the subsidiary according to § 269 Section 2 BGB.
- (4) The buyer is obligated to inspect the goods for noticeable transport damage upon receipt and report any transport damage to the carrier upon transfer and have him confirm the damage. A shipment is deemed accepted without reservations if the recipient or buyer does not notify us of any claims with the supplier within the deadline listed below.
 - * Shipment via overnight express: by 12:00 PM of the day of delivery
 - * Shipment via supply / daily delivery: 1 business day after receipt of goods
 - * Other types of shipment: 6 business days after receipt of goods

6. Right of cancellation, returns

- (1) As soon as the buyer places an order via our online shop and the buyer is a user in terms of § 13 BGB, the buyer has the right to cancel the contract concluded between us without cause within 14 days after receipt of the goods. The cancellation must be in writing, in text form or performed by returning the goods. Further details about the right of cancellation and the cancellation consequences can be found on our online shop website in customer information.
- (2) If the buyer cancels an order placed in accordance with Section (6.1.) unduly, we are authorized without prejudice to claim higher damages, and demand 10% of the purchase price for costs arising from processing the order and for loss of profit. If we have already manufactured or procured the goods in accordance with the buyer's wishes based on the purchase order, the buyer is obligated to pay the full purchase price in case of an unjustified cancellation. The buyer reserves the right to prove a smaller loss.

7. Liability for material defects

- (1) We guarantee the the ordered goods are free of any defects according to the relevant state of the art technology. If the installation instructions are missing, then our goods may only be installed by trained specialized personnel.
- (2) The claims to removal of defects by the buyer are primarily limited to a subsequent performance claim, i.e. repair or replacement delivery. We have the right to choose repair or replacement delivery. If the repair or replacement delivery fails, then the buyer can demand a reduction or contract termination. The repair has failed if and to the extent that a deadline set by us for the supplementary performance has elapsed unsuccessfully. The requirements for exercising the right of cancellation are determined by § 323 BGB. This provision does not apply to users. In this respect, the legal regulations apply.
- (3) The period of limitation for material defects for newly manufactured items is one year after delivery of the item. There is a period of limitation of 3 years from delivery for hydraulic systems delivered as complete units. The purchase of used items is made to the exclusion of any liability for material defects. The aforementioned provisions do not apply if the buyer is a user in terms of § 13 BGB. The statutory warranty periods apply to the purchase of used goods.
- (4) We are liable in accordance with the statutory provision when the buyer asserts claims for damages which are based on fraudulent intent, wilful intent or gross negligence, including fraudulent intent, wilful intent or gross negligence on the part of our representatives or agents. To the extent that we are accused of no intentional breach of contract, the liability is limited to foreseeable losses that typically occur; however, not exceeding the amount of cover by our business liability insurance. Any further liability for damages on our part are excluded; thus, we will specifically not be liable for loss events other than those directly affecting the delivered merchandise, unless they involve death, injury and/or impairment of health. The compulsory liability under the Product Liability law remains unaffected.
- (5) In the case of repair, we are obligated to cover all required costs related to remedial action, in particular transport, road, work and material costs, in so far as the costs do not increase due to the fact that the purchase item has been used at a different location other than the place of fulfillment.
- (6) The above provisions also apply to damages that occur during fault elimination or the replacement of products within the scope of liability for material defects.
- (7) The claims of the buyer from the liability for material defects require that the buyer has fulfilled his obligations for inspection and notification in accordance

with § 377 HGB (German Commercial Code) properly and in good time. We must be informed immediately in writing of all defects, damages and quantity deviations and namely: for recognizable defects, etc. at the latest within 14 calendar days after delivery, and for other defects which could not be discovered upon careful inspection within this deadline, at the latest within 14 days after discovery. Where notification of defect is not made in a timely manner, claims against us in respect of such defects will no longer be admitted. The special regulations in accordance with Number 5.4 shall apply for transport damages.

- (8) In the case of a notification of defect, we reserve the right to inspect and examine the goods that have been rejected in an unaltered condition.
- (9) The exercise of contractual claims against a material defect requires a possible unsuccessful exercise of a warranty claim against the manufacturer.

8. Liability for another legal reason

- (1) Any liability going beyond the liability for damages stated in Number 7. is excluded – irrespective of the legal nature of the claim made. This also applies in particular to claims for damages resulting from culpa in contrahendo on the grounds of other breaches of obligation or of tortious claims for compensation for material damage in accordance with § 823 BGB.
- (2) As far as the liability for compensation against us is excluded or restricted, this will also apply to the personal liability of our personnel, employees, workers, representatives and agents.

9. Recourse against an entrepreneur

- (1) If the buyer re-sells the sold item within the scope of his commercial business to another consumer and if he had to take back this item due to a defect, or if he had to reduce the purchase price, then the buyer can claim his warranty rights with us without setting a term.
- (2) The buyer can also demand reimbursement of the expenses that he had in relationship to the user if the defect being claimed by the user was already present at the time of the transfer of risk to the buyer. Expenses include, in particular, transport, road, work and material costs.
- (3) The buyer has no claim for damages within the scope of this recourse against an entrepreneur.
- (4) The obligation of the buyer in accordance with § 377 HGB remains unaffected by these regulations.

10. Retention of title

- (1) We retain title to the purchased item until the receivables due resulting from the contract have been paid. If the buyer is a dealer in terms of HGB, we retain the title to all delivery items until we have received all payments from the business relationship.
- (2) The buyer is only entitled with our consent to pass on or sell the delivery items in the ordinary course of business; for such eventuality he shall hereby assign to us all claims to the amount of the final invoice owed by himself for the purchase price (including value-added tax) accruing to him against his customers or third parties from resale irrespective of whether the delivery items have been sold on with or without having undergone processing. The buyer is authorized to collect these receivables even after assignment. Our entitlement to collect the receivables ourselves remain unaffected by this. We will not undertake to collect the receivables as long as the buyer satisfies his contractual payment commitments and no application for insolvency proceedings is filed. If one of the abovementioned circumstances comes about, the buyer must provide us with all information at our request that are necessary to collect the assigned receivables and to handover the corresponding documents as well as to inform the respective debtor (third party) of the assignment.
- (3) The processing or transformation of the delivery item is always done for us. If the delivery item is processed together with other goods which are not our property, we acquire a co-ownership of the new item in relation to the value of our delivery item to the other processed items at the time of processing. The items created by processing shall be subject to the same provisions as the item delivered with reservation. If the delivery item is inseparably mixed with other goods which are not our property, we acquire a co-ownership of the new item in relation to the value of our delivery item to the other mixed items. If mixing is carried out in such a way that the item of the buyer can be regarded as the main item, it is agreed that the contractual partner will assign us proportional co-ownership. The contractual partner will safeguard the resulting sole ownership or co-ownership for us.
- (4) For the case that the value of the securities exceed the claims to be secured by more than 20%, the seller is obligated to release the securities due to him at the request of the buyer. We are entitled to select the securities to be released.

11. Repair – service – assembly

- (1) The general terms and conditions also apply – where relevant – to work performed by us with regards to repairs, service and assembly. In addition, the clauses below apply as agreed.
- (2) In general, repair parts and used parts are delivered free to the buyer's address. Freight or carriage charges paid will be re-invoiced by us.

- (3) The shipment of service parts is carriage due in all cases at the buyer's expense.
- (4) The warranty in the case of repairs and service extends to proper technical execution as well as to dimensional accuracy and maintenance of the strength and load-bearing capacity of the serviced vehicles or vehicle parts. For repairs, warranty claims lapse within one year after acceptance of the work performance; for users, within 2 years.
- (5) If defects of our work for the assembly of bodies or other components is found in a third-party workshop, then we must be notified of this before continuing the assembly work for the purpose of correcting the defects. If notification is not made, then the additional costs or other disadvantages arising from this are the responsibility of the buyer.
- (6) We are not liable for
 - * defects in units whose correction is not within the scope of the repair order,
 - * theft of vehicles that cannot be locked,
 - * damages to engines due to a lack of antifreeze or
 - * the content or cargo of vehicles handed over to us for repair.
- (7) We have a right of lien to the items handed over to us for service for the costs and expenses arising from the service work. The contractual lien can also be asserted from claims on receivables based on previously performed work and all other services, as far as they relate to the ordered item. The right of lien applies to other claims relating to this business relationship only if such claims are uncontested or have been determined to be legally valid.

12. Place of jurisdiction – place of performance – governing law

- (1) The place of performance for all deliveries is the registered office of our company.
- (2) Place of jurisdiction for Winkler operations in Germany:
If the buyer is a dealer in terms of HGB, a legal entity or special fund under public law, then the place of jurisdiction is Stuttgart (District Court Bad Cannstatt). In this case, we are also entitled to file suit against the buyer at the court of his jurisdiction. The same applies if the buyer has no general place of jurisdiction in Germany, changed his place of residence or usual location abroad after the conclusion of the contract, or if his place of residence or normal location is unknown at the time a complaint is filed.
- (3) The contract is governed exclusively by the law of the Federal Republic of Germany. The UN Convention on Contracts for the Sale of International Goods is excluded.
- (4) Should individual provisions of the general conditions of sale be invalid, the validity of the contract will otherwise not be affected by this. Invalid provisions will be replaced by the legal regulation.

Our conditions of sale are available in other languages and for operations outside of Germany at winkler.de.

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