

# General Terms and Conditions of Walbert-Schmitz GmbH & Co. KG

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## I. Scope of application

1. These General Terms and Conditions apply for the legal relationships, meaning all offers, contracts, services, and deliveries of the Contractor, between Walbert-Schmitz GmbH & Co. KG (hereinafter referred to as „Contractor“) and the Principal. The details of the order confirmation are stipulated by the contracts concluded between the Principal and the Contractor. The agreements made in the order confirmations outrank these General Terms and Conditions.
2. The General Terms and Conditions only apply for business persons.
3. These General Terms and Conditions apply exclusively. Opposing General Terms and Conditions or deviating General Terms and Conditions of the Principal are not recognised unless the Contractor has explicitly agreed to their validity in writing. The acceptance of the Principal's counter confirmation with reference to his General Terms and Conditions does not constitute such approval. These General Terms and Conditions also apply if the Contractor, in the knowledge of opposing General Terms and Conditions or the Principal's deviating General Terms and Conditions, executes services and deliveries without reservations.
4. These General Terms and Conditions apply in their respectively valid version for all future legal transactions with the Principal. For these subsequent transactions the Contractor provides the Principal with the opportunity of reasonable acknowledgement of these General Terms and Conditions.
5. The contractual language is German. The laws of the Federal Republic of Germany under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) apply exclusively.

## II. Formation of a contract

1. Offers of the Contractor remain subject to change unless they have been explicitly and in writing labelled as binding.
2. The contract between the Contractor and the Principal is formed upon acceptance of the Contractor's offer by the Principal. The Contractor shall provide the Principal with a written order confirmation.

## III. Subject of the Contract

1. The specific extent of the services to be performed is based on the individual contracts concluded between the Contractor and the Principal and/or the order confirmations. This particularly applies for the remunerations for the deliveries and services.
2. Verbal commitments or commitments over the phone, subsidiary agreements and stipulations are only effective upon written confirmation by the Contractor.
3. Measurements, weights, illustrations, descriptions and drawings as well as other documentation are only approximations unless explicitly assured as binding. Minor deviations in the consistency of the material, measurements, and forms are permissible.

## IV. Delivery and performance deadlines/delivery

1. Subject to individual contractual regulations the performances of the Contractor occur „ex works Contractor factory Aachen“ according to Incoterms 2010. For purposes of clarification it is pointed out that the Contractor delivers the goods by providing the goods to the Principal at the nominated place of delivery at the possibly agreed location, however without loading of the pick-up transport means. If a certain location was not agreed upon at the place of delivery and if several locations could be considered, the Contractor may select the location best suitable for the purpose.
2. The deadlines for the supply of the goods and/or provision of services stipulated by the Contractor in the offer or the order confirmation are non-binding scheduled dates. These dates are only binding if they have been termed as such, however not prior to the clarification of all pending necessary technical issues required in this context and the provision of all documents, information, etc. by the Principal.

3. The Contractor delivers the goods in accordance with IV. No. 1 at the agreed point in time or within the agreed period.
4. If the provision of services and/or the delivery of goods is delayed by the Principal due to circumstances which are solely or predominantly the responsibility of the Principal, the deadlines determined between the parties are appropriately extended by a period corresponding with the duration of the circumstances. The same applies in case of delays due to circumstances which are neither the responsibility of the Contractor nor the Principal, particularly force majeure, acts of terrorism, official orders, strike, lock-out, fire, war, loss of energy, accidents, lack of water, and natural disasters.
5. If the delivery of goods is delayed due to circumstances for which the Principal is responsible or if the Principal is in default of acceptance, he shall reimburse the Contractor for the resulting damages and additional costs. If the goods are stored at the Contractor or a third party, the Principal is obligated to pay storage costs which are negotiated separately. The obligations regarding the payment of agreed remuneration remain unaffected.
6. If the Contractor is not able to deliver or provide the services according to the agreement on schedule, he shall inform the Principal of this fact as soon as possible, stating the reasons for the delay and the expected duration of the delay.
7. Until the delivery according to IV. No. 1 the Contractor is responsible for the costs concerning the goods except for the following costs for which the Principal is responsible:
  - packaging,
  - all costs concerning the goods after the time of delivery according to IV. No. 1,
  - all additional costs which were either generated due to the provided goods not having been accepted or that there was no notification regarding a new place or time for the hand-over of the goods determined by the Principal, providing that the goods are clearly identified as being the contractual goods,
  - if applicable, all customs duties, taxes and other levies as well as all due costs for customs in case of export,
  - all costs and levies incurred by the Contractor generated due to the Principal's support (at his request) during the procurement of export permits or other official approvals necessary for the export of the goods.

## V. Transfer of risk

1. Subject to individual contractual regulations the performances of the Contractor occur „ex works Contractor factory Aachen“ according to Incoterms 2010. For reasons of clarification it is pointed out that the agreed prices do not include the costs for transport, insurance and other fees for the delivery of the goods to the Principal.
2. Until the delivery of the goods according to IV. the Contractor is responsible for all risks of loss of or damage to the goods. Whenever the Principal is entitled to determine the time within an agreed period and/or the location at the nominated site for the hand-over of the goods, he is obligated to inform the Contractor in the appropriate manner. If the Principal has neglected to inform the Contractor regarding a location for the hand-over of goods, the Principal bears all risks of loss or damage to the goods as at the agreed delivery time or the expiration of the agreed delivery period, provided that the goods were clearly labelled as the contractual goods.

## VI. Remuneration

1. The remuneration is based on the contractual agreements.
2. All remunerations and prices are plus VAT; in case of delivery from or to a foreign country plus all incurred levies and customs fees.
3. Plans, drafts and drawings as well as required ancillary services are calculated according to the rates of the Scale of fees for Architects (GOA). They are principally included in the offers unless special agreements have been made. The Principal agrees to the appropriate invoicing of surcharges based on additional work and special costs for additionally commissioned performances and deliveries.

4. All plans, drafts and drawings, models and samples are subject to separate, appropriate remuneration if the order is not granted.
5. Unless otherwise agreed, invoices are due and payable net within 8 days from the date of invoice. Discounts are excluded. Timeliness is based on the date of validation.
6. The acceptance of bills of exchange or cheques occurs only on account of performance.
7. If the Contractor has several claims against the Principal and the Principal does not explicitly stipulate his payment for the settlement of the respective claim, the received payment of the Principal is settled according to § 366 (2) BGB (German Civil Code).
8. If the Principal is in default with a payment by more than two months, the Contractor is entitled to withdraw from the contract and demand compensation for incurred damages following a warning and the expiration of an appropriate period of time. The Contractor is furthermore entitled to demand default interest if the payment terms stipulated in No. 3 and 5 are exceeded. If the parties have not determined the respective interest rate, the Contractor is entitled to demand annual interest of 8 percentage points above the respective base interest rate.

#### **VII. Reservation of title**

1. Until the settlement of all claims against the Principal the Contractor reserves the right to retain ownership of the delivered goods as well as new items created by processing the delivered goods. This also applies for already incurred costs which are due in the future.
2. In case of conduct contrary to the agreement by the Principal, particularly in case of default of payment, the Contractor is entitled to withdraw following an appropriate period of grace and the Principal is obligated to surrender the goods.
3. The assertion of the reservation of title as well as the seizure of the goods by the Contractor do not constitute a withdrawal from the contract. A withdrawal from the contract is only effective if the Contractor makes such a declaration.
4. The Principal is obligated to treat the goods carefully during the period of reservation of title and ensure maintenance and inspection services if required.
5. The Principal is not entitled to on-sell the goods without the permission of the Contractor. In the event of the Contractor's consent the Principal now assigns all claims from the on-selling of the goods to the Contractor in the amount of the total invoice sum agreed to with the Contractor (incl. VAT). This assignment applies regardless of whether the goods were on-sold prior or after possible processing. The Principal remains entitled to collect the claim also after this assignment, whereby the Contractor is at liberty to collect the claim himself. However, the Contractor shall only collect the claim if the Principal does not comply with his contractual obligations for payment.
6. The processing or reconstruction of the goods under reservation of title by the Principal always occurs in the name and on behalf of the Contractor. The Principal does not obtain ownership of the goods with this action. However, if the ownership of title should expire due to any circumstances, the parties agree that the ownership to the newly produced items is transferred to the Contractor upon processing; the Contractor accepts the transfer of ownership. The Principal remains unpaid custodian. If the goods are processed with items owned by a third party, the Contractor obtains co-ownership of the new items at the ratio of the objective value of the goods to the other processed objects at the time of processing. The same applies in case of intermingling or connecting. If the intermingling and connecting occurs in a manner whereby the matter of the Principal is to be considered the main matter, the parties agree that the Principal assigns to the Contractor proportionate co-ownership and that he preserves the thus created ownership for the Contractor. To secure the Contractor's claims the Principal assigns the claims which he obtains due to connection of the reserved goods to the Contractor. The Contractor accepts this assignment.
7. In case of third-party access to the goods, particularly in case of seizure of the goods or execution of artisan's lien the Principal has to inform the Contractor immediately and point out the existing reservation of title to the third party.

#### **VIII. Material defects**

1. The Contractor is responsible that performances provided by him are free of material defects. The Principal is obligated to examine the performances provided by the Contractor without undue delay and inform the Contractor in writing regarding any defects without undue delay, however no later than within 10 days following delivery.
2. Defects pertaining to deliveries and services concerning trade fair and exhibition designs have to be indicated immediately, however no later than 1 day following the hand-over of the stand.
3. Following the execution of an agreed acceptance of the delivery object by the Principal the reproach of material defects which were discernible according to the type of acceptance is excluded.
4. For the remainder, the rights and obligations of the parties are based on the legal regulations.

#### **IX. Liability**

1. The Contractor is liable for compensation according to the legal regulations pertaining to personal injuries and damages according to the Product Liability Act.
2. The Contractor is liable for other damages unless otherwise stipulated in a warranty adopted by him, excluding in case of the following conditions:
  - The Contractor is liable for damages caused by malicious conduct as well as damages caused by intent or gross negligence of the Contractor's legal representatives, executives and vicarious agents according to the legal regulations.
  - The Contractor is liable to pay compensation, with the exception of the damage due to default, limited to the amount of the foreseeable damage typical to the contract, for damages resulting from slight negligent violation of essential contractual obligations and for damages intentionally caused by simple vicarious agents of the Contractor without violation of essential contractual obligations.
  - In case of slight negligent default of the Contractor he is liable at maximally 0.1 % of the order amount per full hour in case of a bindingly agreed hand-over deadline. The compensation due to delay is limited to 5 % of the order amount in total.
  - The Contractor is not liable in the context of the first alternative stipulated under IX. No. 2 second bullet point for loss of profit, indirect damages, damages caused by a defect, and claims by third parties with the exception of claims due to the violation of third party proprietary rights.
3. A contributory negligence of the Contractor is to be offset against the amount of a possible compensation claim.
4. For the remainder, all liability of the Contractor is excluded.
5. The Principal is obligated to notify the Contractor in writing of any damages in terms of the above mentioned liability regulation without undue delay so that the Contractor is informed as soon as possible to be able to perform damage control together with the Principal.

#### **X. Statute of limitation**

1. With the exception of cases of malice, the Principal's claims based on a material defect or defect of title pertaining to the performance become statute barred six months after the Principal obtained knowledge of the claim, however at the latest within one year, commencing with the acceptance of the respective performance. This also applies for claims from unlawful acts based on a defect.
2. For the remainder, the legal periods of limitation apply.

#### **XI. Rent**

1. The Principal is obligated to treat the provided rental objects with care and to notify the Contractor of any damages without undue delay.
2. The Principal is obligated to insure the rental object against transport damages.
3. The return of the rental object is considered concluded when the object is handed over to the Contractor or a specially agreed location in an orderly condition.

4. In the event of exceeding the agreed rental period the Contractor is entitled to demand usage compensation in the amount of the agreed rent until the actual hand-over of the rental object. Further compensation claims remain unaffected here from.

#### **XII. Forms and tools**

1. Forms and tools which are manufactured and delivered by the Contractor or a third party on his behalf remain the property of the Contractor subject to a special contractual agreement.
2. The costs for the manufacture of the forms and tools are borne by the Principal.
3. The Contractor shall store such forms and tools for the purpose of possible subsequent orders free of charge for maximally 1 year after the last order. He shall inform the Principal prior to their destruction.
4. The Contractor is liable for damages to the forms and tools according to IX. of these General Terms and Conditions.

#### **XIII. Vendor parts**

1. If an agreement was made with the Principal regarding the supply of parts for the assembly, the completion of the agreed goods or similar, these parts have to be delivered free works of the Contractor at the expense of the Principal.
2. The Principal is responsible that these parts are delivered to the Contractor in sufficient quantities, considering any rejects, in ample time to ensure continuous production.
3. If the Principal violates this obligation to participate, he is liable for the resulting damage.

#### **XIV. Property rights**

1. Any plans, drawings, drafts, manufacturing and assembly documents, models, etc. produced by the Contractor remain his property together with all related rights. The Principal is not entitled to utilise these protected works himself or have them utilised by third parties. In case of violation the Principal is liable based on the legal protective regulations, however at least in the amount of the remuneration usually achieved by the Contractor, for each case of violation excluding continued violation.
2. The Contractor is entitled to continue using the works.
3. If the Contractor utilises planning documents which were provided to him by the Principal, the Principal is responsible that the Contractor's performances based on these planning documents do not violate any third party rights. The Contractor is not obligated to check the provided documentation to verify that third party rights are not violated.
4. Immediately upon the assertion the Principal exempts the Contractor from all third party claims resulting from the violation of third party rights in this context. This particularly also comprises the costs incurred to the Contractor due to the legal defence.
5. If the Contractor is prohibited to manufacture and deliver goods due to such legal violation, it represents an important reason in terms of XV. No. 2.

6. The Contractor is entitled to demand compensation from the Principal for any performances or costs provided by him up to that point in time.

#### **XV. Termination of the contract**

1. The individually agreed contract between the parties ends with the delivery of the goods or the expiration of the agreed term. If a fixed term was not agreed upon, the term of the contract is indefinite and may be terminated respectively with a period of notice of one month to the end of a quarter.
2. Both contractual parties are entitled to extraordinary termination if the respective other contractual partner significantly violates contractual obligations.
3. Upon termination of the contract each party has to return to the other party all technical documentation, materials and tools provided by the other party according to this contract as well as any existing copies thereof without undue delay.

#### **XVI. Off-setting, retention, assignment**

1. The Principal is only entitled to offset own claims or assert a right of retention if his claim has been conclusively determined, is uncontested or accepted.
2. The Contractor is entitled to assign his claims from ongoing business relations with the Principal to a third party (§ 354 a HGB [German Commercial Code]). The parties agree that respective assignment exclusions in the Principal's General Terms and Conditions do not apply.
3. The assignment of claims against the Contractor without the written consent of the Contractor is excluded.

#### **XVII. Final conditions**

1. The Contractor reserves the right to alter these General Terms and Conditions at any time and without stating reasons. He shall inform the Principal in writing regarding the executed changes. The Principal agrees to the changes unless he objects to them within a term of 14 days from notification of the change. The Contractor shall inform the Principal of this fact in the notification.
2. Subsidiary agreements, changes and amendments require the written form to be effective; this also applies for the reversal of this regulation.
3. If a regulation in these General Terms and Conditions should be or become ineffective or unfeasible, the effectiveness of the General Terms and Conditions in general is not affected. In such a case the parties are rather obligated to replace the ineffective or unfeasible condition with an effective or feasible condition which corresponds with the spirit and economic purpose of the condition within legal limits.
4. Place of fulfilment is the registered office of the Contractor.
5. Place of jurisdiction for all disputes arising from this contractual relationship is Aachen. However, the Contractor is entitled to also sue the Principal at any other admissible place of jurisdiction.