

# General Sales Conditions of Wilhelm Ungeheuer Söhne Befestigungssysteme GmbH

This translation is solely for the client's convenience. The original German text is authoritative in all respects. Should there be any differing interpretation between the two, the German text shall prevail.

1. Order placement, special conditions
- 1.1 Our deliveries and services are carried out and performed exclusively subject to the under mentioned terms and conditions and, where applicable, to special conditions advised to the buyer.
- 1.2 The buyer's General Business Conditions and all side-agreements apply only with our express written confirmation. Neither the absence of any objection nor the performance of a delivery or service constitutes the recognition of third-party business conditions.
- 1.3 Our sales conditions apply only to firms pursuant to § 310(1) BGB [German Civil Code].
2. Prices
- 2.1 Our prices are quoted ex works. The statutory rate of value added tax (VAT) is not included in our prices. The applicable rate of VAT is shown separately on the invoice on the date of issue. Orders worth over €1,500.- are delivered free of charge within Germany.
- 2.2 The deduction of cash discount is subject to separate written agreement.
- 2.3 Our prices are based on costs (material and commodity prices, wages, production and transport costs) and quantities ordered. Should the time between contract conclusion and agreed delivery date amount to at least 4 months and should the total costs during this time have risen by at least 5%, then we are entitled to raise prices accordingly to compensate for the aforementioned cost increases.
3. Delivery
- 3.1 Partial deliveries are permissible
- 3.2 Delivery dates or periods quoted by us are approximate indications only and are binding only if expressly confirmed as such and agreed in writing.
- 3.3 The delivery period begins as soon as the buyer has fulfilled all contractual prerequisites. A contractually stipulated delivery date will be deferred by the same period of time that the fulfillment by the buyer of the prerequisites for delivery is delayed.
- 3.4 Readiness for shipment suffices to meet the delivery date
- 3.5 Should after the conclusion of the contract we or our sub-contractor experience unforeseeable events over which we have no control, such as a lack of raw materials or energy, impaired castings, failure of moulds and machinery required for production, labour disputes, force majeure, or circumstances for which we cannot be held accountable and which impede or make delivery impossible, then the delivery period or date will be extended or postponed by the same duration as that of the delaying factors.
- 3.6 In case of delays or events pursuant to § 3.5 the buyer can after a period of 3 months has elapsed grant a reasonable extension. If no delivery is made during the extension or if we state that we are unable to make delivery for reasons listed under § 3.5, the buyer may cancel the contract. Further liability is regulated under §14.
- 3.7 If a contract penalty for delays has been agreed on, the buyer shall, moreover, be entitled to the statutory right to cancel the contract. Furthermore, the provision of § 3.6 sentence 3 shall apply.
- 3.8 If a partial delivery is delayed, the buyer cannot because of this claim any rights in respect of the remainder of the delivery, unless the partial delivery is of no interest for him.
4. Acceptance/final inspection
- 4.1 If acceptance/final inspection has been agreed upon or is legally prescribed, it shall take place on our company premises.
- 4.2 If no objections are raised at the time of acceptance/final inspection, then no claims for any defects that were evident at the time of acceptance/final inspection may be made later.
- 4.3 If an acceptance/final inspection date has been agreed upon and the buyer through his own fault does not observe it, the acceptance/final inspection shall be deemed as effected without objection. If the buyer is prevented from acceptance/final inspection because of any circumstances listed under § 3.5, he is to be granted a reasonable extension of period for the acceptance/final inspection.
5. Shipment, passing of risk
- 5.1 Our deliveries shall be ex works.
- 5.2 Risk shall pass to the buyer on notification of readiness for shipment, at the latest when the goods leave the manufacturer's premises. This also applies if we handle the shipping.
- 5.3 Transport insurance shall only be taken out only if specifically agreed on and at the buyer's expense.
6. Packaging
- 6.1 If our packaging is reusable as per agreement, it must be returned to us immediately; otherwise we shall charge for replacement.
- 6.2 For buyers in Germany: our packaging is usually sales/disposable packaging in accordance with packaging regulations [VerpackV].
- 6.3 In the case of transport packaging, the buyer may, at his own expense, return this to us appropriately segregated for disposal/recycling by us.
7. Materials supplied by the buyer
- 7.1 If the materials supplied to us by the buyer are faulty, wrong or late, he will bear the costs for any damage or losses thereby caused to us.
8. Weights and delivery quantities
- 8.1 Complaints by the buyer are unwarranted as long as margins of tolerance are in line with trade practice and quantities and weights do not deviate by more than 5%
- 8.2 For the purposes of invoicing, weights and delivery quantities are based on those amounts specified in our delivery notes and invoices.
9. Deliveries to ourselves
- 9.1 If, without any fault on our part, our suppliers fail to deliver properly and on time, we may suspend or cancel our delivery obligations.
10. Warranties
- 10.1 The buyer shall inspect the goods immediately and to notify us of any defects in writing. Concealed defects must be reported immediately after their discovery. The same applies if goods other than those sold or a different quantity from that ordered is delivered.
- 10.2 Until a claim has been resolved, defective goods may not be processed further. We have to have the opportunity to locally inspect any reported defects. Defective goods must, moreover, be returned to us at our request.
- 10.3 Samples of goods given to the buyer are type samples. The handing over of these still entitles us to deliver at tolerance margins in line with trade practice.
- 10.4 In the case of defects we shall redress these, in a manner of our choosing, by repairing, supplying replacements or giving a credit note for the value of the defective goods.
- 10.5 Failure of remedial measures shall entitle the client, at his option, to cancel the contract or to demand a reduction.
- 10.6 We accept liability in accordance with statutory requirements in so far as the client makes a claim for damages arising from intentional or gross negligent actions on our part or on the part of our vicarious agents or we culpably breach a fundamental contractual obligation. In such cases our liability for damages is limited to contract-specific, foreseeable damages. Liability for loss of life, bodily harm or damage to health remains unaffected. This also applies to mandatory obligations pursuant to product liability law.
- 10.7 Liability is excluded if not otherwise is provided for in the foregoing.
- 10.8 We provide no guarantee for quality or durability according to §443 BGB [German Civil Code], unless specifically agreed separately in writing.
- 10.9 For defects in material which despite adequate inspection on delivery we could not detect, our liability is limited to the extent of our supplier's liability.
- 10.10 Our warranties do not extend to damage caused by external influences/forces, improper storage, improper usage/treatment, faulty assembly/installation, incorrect maintenance, corrosion or wear and tear. This applies also to damages caused by changes to material properties that can arise from subsequent processing of the products, e.g. from reshaping/recasting, welding, thermal treatment, etching/staining, galvanisation or other forms of surface treatment such as embrittlement or stress fractures.
- 10.11 Rights to warranty claims by the buyer lapse 12 months after delivery of the goods, unless a longer statute of limitation is prescribed by law as unconditional.
11. Right of recourse to manufacturer
- 11.1 If a consumer makes a warranty claim for goods manufactured by us, the buyer is obliged to notify us immediately, within 5 working days at the latest. Failure to do so implies acceptance of the goods.
- 11.2 An obligation by us to make compensation under § 478 BGB [German Civil Code] will be fulfilled solely in the form of a trade-in credit/vouchers for goods of equal value.
12. Payment conditions, delay/default
- 12.1 Unless otherwise agreed, our invoices shall be payable immediately upon receipt without any deduction
- 12.2 Counterclaims, including warranty claims by the buyer, do not entitle the buyer to a right of setoff or withholding of payment, unless an acknowledged or legally enforceable counterclaim exists.
- 12.3 If the buyer gets into payment arrears, we shall be entitled to interest at the legal rate. We shall, furthermore, be entitled to withhold deliveries within the scope of our business relationship until the buyer's has fulfilled all payment obligations for preceding deliveries or to make these conditional upon cash in advance or the provision of appropriate security. The same applies if after the conclusion of the contract we become aware of circumstances which would indicate that the buyer's creditworthiness has become impaired and the fulfillment of outstanding payment obligations arising from the contract in question as well as other contracts (including other individual contracts under a master agreement) has been put at risk.
13. Retention of title to the goods
- 13.1 We shall retain title to, and ownership of, any delivered goods until all present and future claims arising out of the business relationships with the buyer have been met (reserved goods/goods subject to the retention of title).
- 13.2 The buyer is obliged to store and mark reserved goods separately.
- 13.3 Any processing or alteration of reserved goods by the buyer shall be carried out on our behalf, without this giving rise to any obligations for us. If the buyer combines, mixes or processes our reserved goods with other goods, we shall be entitled to pro rata joint ownership of the resulting product(s). The value of our joint ownership shall be determined by the ratio of the invoice value of our reserved goods to the sales value of the goods resulting from such combining, mixing or processing, which are deemed reserved goods in the context of these conditions.
- 13.4 The sale of such reserved goods is permitted in the normal course of business, so long as the buyer safeguards our extended retention of title and ownership (assignment of accounts receivable according to 13.5). Any other dispositions, in particular, pledging/hypothecation and collateral assignment of the reserved goods, are not permitted.
- 13.5 All receivables due to the buyer arising from an on-sale or resale of reserved goods or for other legal reasons are hereby pre-assigned by the buyer to us in full. In the event of joint ownership the assignment applies only to the pro rata share of the receivables according to § 13.3. If the aforementioned receivables are paid in or transferred by the buyer to a current account, such current account receivables shall be assigned to us in full. After balancing of the account they are to be replaced by the account balance up to the amount assigned that constituted the original current account receivables; after closure of the current account, the same shall apply to the closing balance.
- 13.6 The buyer is permitted to collect assigned receivables only in the normal course of business; such permission is revocable. On our instruction the buyer shall notify the debtor of the assignment, just as we have the right to notify the debtor thereof at any time.
- 13.7 The buyer's permission to dispose of reserved goods and to process, combine or mix them, and permission to collect assigned receivables shall lapse if conditions of payment are not observed, if unauthorized disposals are made, if the buyer's financial situation deteriorates significantly, if bills of exchange are protested and/or cheques returned and if insolvency proceedings are filed against the buyer. In such cases we shall be entitled to repossess the reserved goods without having to grant any extension or notify a cancellation of the contract, to enter the buyer's premises for that purpose, to demand any relevant information and to inspect the buyer's accounts.
- 13.8 If the value of any collateral granted to us for our receivables exceeds their value by a total amount of more than 10%, we shall, upon the buyer's request, be obliged to release the surplus collateral in a manner of our choosing.
- 13.9 The buyer shall inform us immediately of any impending or executed seizure by third parties of any reserved goods or assigned receivables.
- 13.10 Insofar as a registration and/or compliance with other requirements a condition for our reservation of ownership/retention of title, the buyer shall at his own expense be obliged to immediately take all necessary measures and to make all necessary official notifications to that effect. If a prevailing jurisdiction precludes an agreement for such reservation of ownership and the buyer avails himself of trade credit, the buyer shall provide us with other suitable collateral.
14. General Limitations of Liability
- 14.1 Regardless of the legal status of a claim made, further liability for damages than provided for in §10 is excluded. This applies particularly to claims arising from culpa in contrahendo [fault in conclusion of contract], other breaches of contract or delictual compensation claims pursuant to § 823 BGB [German Civil Code].
- 14.2 The limitation in §14.1 applies also if, instead of exercising a claim for damages, the buyer demands reimbursement of pointless expenses rather than the performance of services.
- 14.3 Insofar as our liability for damages is limited or excluded, this applies also in respect of the personal liability for damages of our staff, representatives and vicarious agents.
15. Violation of the rights of third parties
- 15.1 If any deliveries are made that are based on drawings or other specifications provided by the buyer and should third-party rights, especially industrial property rights, be violated thereby, the buyer shall on our first demand indemnify us against all claims unless we have been a party to causing such claims intentionally or through gross negligence, in which case the damage shall be borne by the buyer and us §§ 840, 264 BGB [German Civil Code].
16. Models, tools, other moulds
- 16.1 Tools, chills, moulds and forging dies, etc... shall remain solely our property, even if the buyer pays a share of the cost for using them.
- 16.2 If the buyer makes available to us with tools, chills, moulds and forging dies, their delivery to us shall be free of charge. We shall be liable for their loss or deterioration and any resulting damage only to the extent that we have insurance cover or if we are liable for gross negligence or wilful action.
17. Place of performance, place of venue, applicable law
- 17.1 Place of performance for deliveries and payment is Schmittlen-Niederreifenberg.
- 17.2 Place of venue, including that for litigation regarding bills of exchange and cheques, shall be, so far as legally permissible, the registered office of our company. We reserve the right, however, at our option, to institute legal proceedings at any other court in a legally established jurisdiction.
- 17.3 These Conditions are governed exclusively by the laws of the Federal Republic of Germany, to the exclusion of the regulations based on the Hague Conventions Relating to a Uniform Law on the International Sale of Goods and the UN Convention on Contracts for the International Sale of Goods. For the interpretation of delivery clauses the INCOTERMS, as valid at the time, shall apply.
18. Data storage
- 18.1 We store data necessary for the contractual execution of orders according to the German Federal Data Protection Act