

## **Terms and Conditions of Sale and Delivery of WINAICO Deutschland GmbH**

The following Terms and Conditions of Sale and Delivery of WINAICO Deutschland GmbH, Creglingen apply to all present and future offers made by us and contracts concluded with us.

### **1. General/Scope of Application**

1.1 Our Terms and Conditions of Sale and Delivery apply exclusively and only in relation to traders („Unternehmer“), public-sector legal entities and public-sector bodies or funds within the meaning of Paragraph 310(1) German Civil Code („BGB“).

1.2 Any general terms and conditions of the Customer which deviate from or conflict with our Terms and Conditions of Sale and Delivery shall not form part of the contract concluded with us, even if we do not expressly object thereto.

1.3 We recognize any terms and conditions of the Customer that conflict with or deviate from our Terms and Conditions of Sale and Delivery only if we have expressly consented to their application in writing.

### **2. Conclusion of Contract**

2.1 A contract between us and the Customer shall come about when we confirm the order in writing, or by delivery of the goods ordered. Solely our confirmation of the order or a contract concluded by both sides in writing including these Terms and Conditions of Sale and Delivery, shall constitute the terms of the contract, in particular the scope of the goods/ services. The aforementioned state all of the agreements between the contract parties regarding the subject matter of the contract.

2.2 We reserve the right to make changes to the pictures, descriptions, drawings, weights and dimensions stated in our brochures, price lists, catalogues and our offer provided that they do not significantly alter or improve the quality of the goods/services to be delivered and the changes or deviations are reasonable for the Customer.

### **3. Prices and Payment Terms**

3.1 Our prices are stated ex works, including packaging and insurance, excluding transport costs. All prices are exclusive of statutory value added tax. The value added tax as applicable in the Federal Republic of Germany from time to time shall apply to the delivery of goods to other EU countries. If the Customer of another EU country shows us a value added tax identification number (VAT ID no.), we can issue a strictly net invoice to the Customer.

3.2 WINAICO reserves the right to change the prices accordingly by written notice prior to delivery of the products if changes (= cost increases and cost decreases) to the cost of raw materials occur after the contract has been concluded. WINAICO shall prove a potential increase in cost upon request by the Customer. The customer can object to changes in prices in writing within five (5) working days following receipt of the notice. WINAICO shall then have the option of carrying out the delivery of the products to the Customer for the price that has applied so far or to terminate the contract in writing and with immediate effect in relation to the outstanding delivery quantities.

3.3 Unless otherwise stated in the confirmation of the order, the purchase price shall be due for payment without deduction within fourteen (14) days following the date of the invoice. The deduction of any cash discount shall require a separate written agreement.

3.4 If the Customer is late with payment, we shall be entitled to demand default interest in accordance with Paragraph 288 German Civil Code. This does not exclude the right to claim further damages due to late performance.

3.5 The Customer may only offset counterclaims, which are undisputed, have become final and absolute („rechtskräftig“), or which we have acknowledged against our claims.

#### **4. Delivery Dates, Late Performance, Impossibility**

4.1 Any delivery dates and periods shall be as agreed in the individual case. Delivery periods and dates shall apply only subject to WINAICO receiving correct and timely supplies itself. We shall be legally responsible for („vertreten“) the risk of procurement – regardless of fault – only if this has been expressly agreed. Delivery deadlines and dates shall be deemed to have been met if we have handed the goods to be delivered over for transportation in due time or, if it has been agreed that delivery of the goods shall be ex works, they are ready for dispatch and notice thereof has been given. We shall not be responsible for any delay in the transportation, for which we are not responsible.

4.2 We shall not be liable for nonperformance of the contract, in particular but without limitation for impossibility of the delivery or for delays in delivery, to the extent that said impossibility or delays in delivery were caused by force majeure (e.g. natural catastrophes, war, unrest) or other events that were not foreseeable at the time the contract was concluded (e.g. stoppages of all kinds, difficulties in procuring materials or power, transport delays, strikes, lawful lock-outs, a shortage of workers, power or raw materials, difficulties in procuring necessary administrative licences, administrative measures or the non-supply, incorrect supply or untimely supply by suppliers) for which we are not legally responsible („vertreten“). We shall be obliged to notify the Customer of the event without undue delay in writing as soon as it is evident that a performance cannot be rendered in accordance with the contract. If in any such case it is not foreseeable that we will be able to render its performance within a reasonable period that is also reasonable for the Customer – but in any event within 4 months – we and the Customer may rescind the contract. The same shall apply mutatis mutandis if the reasons for the non-performance of the contract still exist after the expiry of 4 months following the notification. If these reasons were already apparent to us at the time the contract was concluded we shall not be entitled to rescind. In the event of impediments that are of temporary duration the deadlines for delivery or performance shall be extended or the delivery or performance dates shall be postponed by the period of the impediment plus a reasonable start-up period.

4.3 If the Customer is in default of taking delivery („Annahmeverzug“) or if the Customer intentionally or negligently breaches other obligations to cooperate, we shall be entitled to demand compensation for any loss we thereby incur including any additional expenses. After the expiry of a reasonable period set by us, we shall be entitled to rescind the contract and/or claim lump-sum damages for non-performance in the amount of 5% of the order value.

The right to prove a greater or lower loss, or that there has been no loss at all, is expressly reserved for both contract parties.

4.4 We shall be liable in accordance with the statutory provisions in the event of a delay in performance in cases, in which the delay in performance is due to intent or gross negligence by us or

a representative or a vicarious agent. In other cases of delay in performance our liability is limited to 15 % of the value of the delivery. Any further-reaching liability for delay in performance is excluded. These limitations and exclusions of liability shall not apply to liability because of any injury to life, body or health or the breach of a material contractual obligation under Clause 7.6 and transactions for delivery by a fixed date pursuant to Paragraph 376 German Commercial Code (HGB) or Paragraph 286(2) no. 4 German Civil Code (BGB).

4.5 If delivery of the ordered goods is impossible for reasons, for which we are responsible, the Customer shall be entitled to demand damages or the reimbursement of expenses in accordance with the statutory provisions.

***4.6 Customers who fail to pick up their ordered goods two weeks after the assigned delivery date will lose right of calling.***

## **5. The Passing of Risk, Packaging**

5.1 All deliveries shall be made ex works or ex distribution warehouse. The place of performance shall be Creglingen.

5.2 If we dispatch the goods to a place other than the place of performance and do so at the Customer's request, the risk shall pass to the Customer as soon as we have handed the goods over to the haulage company, the carrier or the person or institution otherwise intended to carry out the dispatch.

5.3 If the Customer is in default of taking delivery, we shall be responsible only for intent and gross negligence while the Customer is in default. If the Customer is only owed fungible goods of a particular class, the risk shall pass to the Customer at the point in time when he is in default because he does not accept the goods offered.

5.4 Part deliveries are permitted.

5.5 The Customer shall assume the disposal of all packaging at his own cost. We are under no obligation to take packaging back.

## **6. Reservation of Title**

6.1 We shall retain title to goods delivered by us until all of our claims arising out of the business relationship with the Customer have been satisfied in full, in particular until the Customer has settled the account balance („Kontokorrentvorbehalt“).

6.2 The Customer shall be obliged to store the reserved goods delivered properly and separately from his own goods or those goods of third parties.

6.3 The Customer shall be obliged to ensure the reserved goods delivered at his own cost against fire, water damage, breaking and entering and theft. The Customer shall be obliged to notify us of any damage to the reserved goods without undue delay. We shall be sent the insurance policy for inspection upon request. The Customer assigns all claims against the insurance company arising out of the insurance contract to us in advance. We accept said assignment.

6.4 The Customer must notify us without undue delay in writing in the event of any attachment of or other access by third parties to the reserved property.

6.5 The Customer shall be entitled to sell the reserved goods in the ordinary course of business so long as the Customer is not in default of payment. The reserved goods may not be pledged or title thereto transferred as security. The Customer hereby already assigns the accounts receivable that arise out of the re-sale or for some other legal reason (in particular but without limitation any transfer of title to the end customer, any insurance case, tort) concerning the reserved goods to us in full as security. We accept said assignment.

We revocably authorize the Customer to collect the accounts receivable assigned to us in his own name but for our account. If the Customer acts contrary to the terms of the contract – in particular but without limitation if he is in default with payment of a claim for payment – we shall be entitled to require him to disclose the assignment and to hand over the information and documents necessary to collect the account receivable.

6.6 In the event of any breaches of any obligation by the Customer, especially in the event of default of payment, we shall be entitled to take back the reserved goods at the Customer's cost after having set a reasonable deadline. The taking back of goods by us shall constitute rescission of the contract. After taking back the goods we shall be authorized to realize them. The proceeds from any such realization, less the reasonable realization costs, shall be offset against the Customer's liability.

6.7 If the reserved goods are bonded with other objects, the reservation of title shall continue in respect of the newly created object. We shall thereby acquire a share of the joint title, which share shall be in the proportion that the value of the reserved goods (invoice value) has to the value of the new object. If one of the bonded objects is to be considered to be the main object, the Customer shall transfer to us the joint title in the proportion that the value of the goods supplied by us (invoice value) has to the value of the new object. As regards our share of the joint title, the Customer shall keep the new object safe free of charge. If the reserved goods are resold as an integral part of the new object, the assignment in advance agreed in Clause 6.5 shall apply only in the amount of the invoice value of the reserved goods.

6.8 If the value of the security to which we are entitled under the above provisions exceeds our claims by more than 10 %, we shall be obliged to release the security in the value that exceeds said amount. The choice of security to be released shall be up to us.

6.9 If the law of the country, in which the goods to be delivered are located, does not allow a reservation of title, or does so only in limited form, we shall be entitled to reserve other rights in the goods to be delivered. The Customer shall be obliged to cooperate with all necessary measures (e.g. registration) necessary to realize the reservation of title or the other rights, which replace the reservation of title, and to protect such rights.

## **7. Warranties**

7.1 If the goods are defective, the assertion of any warranty claims and exercise of the rights to modify or terminate the legal relationship described in Paragraph 437 no. 2 German Civil Code (BGB) by the Customer shall require that the Customer has properly complied with the obligations he owes under Paragraph 377 German Commercial Code (HGB) to inspect and to report any complaints.

7.2 If the purchased goods are defective, we shall have the right to provide subsequent performance, by, at our option, either eliminating the defect or by delivering new goods that are free from defects. If we choose to eliminate the defect, we shall be obliged to bear all of the expense necessary for the purposes of eliminating the defect, in particular but without limitation the transport costs, infrastructure costs, labour costs and cost of materials. If, in the course of repair work, we exchange materials of the Customer which we have delivered, we shall acquire title to the exchanged defective parts.

7.3 There shall be no defect in quality (Sachmangel) if the complaints are due to incorrect installation by the Customer, improper treatment, use that is contrary to the provisions, or natural wear and tear. If the Customer alters or repairs goods we have delivered or if he has alterations or repairs undertaken by third parties, our liability shall cease to this extent unless the Customer can prove that the alteration or repair did not cause the defect or was not a contributory cause of the defect.

7.4 The Customer shall, at his option, be entitled to rescind the contract or to demand a reduction in the purchase price if – we allow a reasonable deadline for subsequent performance, which we have been set, to expire in vain, or – under the statutory provisions there is no need to set a reasonable deadline for subsequent performance, or – the subsequent performance failed, or – the subsequent performance is impossible.

7.5 We shall be liable in accordance with the statutory provisions if the Customer asserts claims for damages based on an intentional or grossly negligent breach of duty by us or by a statutory representative or by one of our vicarious agents.

7.6 We shall be liable in accordance with the statutory provisions if we or our vicarious agents intentionally or negligently („schuldhaft“) breach a material contractual obligation („Kardinalpflicht“). Material contractual obligations are obligations, the performance of which enable the proper implementation of the Agreement and the compliance with which the other contract party may regularly rely on. However, in such cases the liability shall be limited to the foreseeable damage which typically occurs provided that we are not guilty of having acted intentionally.

7.7 The liability for injury to life, body or health, which is due to an intentional or negligent (schuldhaft) breach of duty by us or due to an intentional or negligent breach of duty by our statutory representatives or our vicarious agents shall remain unaffected; this shall also apply to the mandatory liability under the German Product Liability Act (Produkthaftungsgesetz).

7.8 Unless otherwise agreed above, liability shall be excluded.

7.9 The limitation period for warranty claims shall be twenty-four (24) months. The limitation period shall begin with delivery of the ordered goods. Rescission and a reduction in the purchase price because of nonperformance or performance not in accordance with the contract shall be void if the claim to performance or subsequent performance is time barred and we raise the defense of limitation. In addition hereto, our Additional Terms and Conditions of Guarantee shall apply to the extent agreed in the individual case.

7.10 The Customer shall be entitled to the rights of recourse pursuant to Paragraphs 478 and 479 German Civil Code (BGB). The rights of recourse shall be time-barred in accordance with the statutory provisions.

## **8. Liability**

8.1 Any liability for damages that goes beyond the liability in Clauses 4 and 7 is excluded regardless of the legal nature of the claim asserted. This shall particularly apply to claims for damages arising out of negligence in the course of negotiating („culpa in contrahendo“), because of other breaches of duty or because of tortuous claims for compensation for damage to property pursuant to Paragraph 823 German Civil Code (BGB).

8.2 Insofar as our liability for damages is excluded or limited, this shall also apply to the personal liability for damages of our employees, workers, staff, representatives and vicarious agents.

## **9. Miscellaneous**

9.1 This Agreement shall be governed by German law. The UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

9.2 The place of performance for all obligations arising out of the contract concluded with us shall be Creglingen.

9.3 The place of jurisdiction for all legal disputes in connection with this contract shall be determined by our registered office (seat). We shall in addition have the option to sue the Customer at his registered office (seat) or have all disputes arising out of or in connection with the present Agreement finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.

9.4 The invalidity of individual provisions of this contract shall not affect the validity of the remaining provisions and the continued existence of the contract.

9.5 The parties undertake to replace a void provision by another provision, the economic effect of which comes closest to that of the provision to be replaced. The same shall apply if the contract is silent about an issue, which should have been stipulated by the contract.

Valid starting from 01.01.2014