

# **General Terms of Sale and Delivery**

## **Wirthwein Fastening Systems (Kunshan) Co. Ltd.**

### **I. Scope**

1.The below General Terms of Sale and Delivery apply to all our present and future business relations unless agreed upon differently in written form and in individual cases.

2.We shall not be bound by any differing customer terms and conditions and statements even though we may not object to them at the time of contract conclusion. Such terms become binding only upon our explicit and written acceptance.

### **II. Offer and Order Acknowledgement**

1.All our offers are non-binding. An order shall be considered as accepted only if we have acknowledged our acceptance in written form or when the goods are delivered by us.

2.All agreements, supplements and changes to the contract must be in writing. Verbal or written commitments that differ from the contractual terms and conditions become effective only upon approval by our executive body or those holding special statutory authority.

### **III. Samples, Illustrations, Drawings, Projects Etc.**

1.All drawings, illustrations, brochures, advertising material, lists and records etc. that concern our products, and the information contained therein are not binding unless made so by us in writing.

2.Guaranteed characteristics need to be explicitly indicated as such in the order acknowledgement. If samples and specimen are delivered, their characteristics shall not be taken as guaranteed unless explicitly determined in the order acknowledgement.

### **IV. Prices**

1.Valid are only those prices previously acknowledged by us in written form. All prices are net prices, not including value added tax.

### **V. Delivery**

1.For all delivery periods and deadlines that are not explicitly fixed as such in the order acknowledgement, the customer can subject us to an appropriate delivery deadline two weeks after expiry of such delivery periods and deadlines. Minimum extension time shall be one week. Our delivery delays occurs only on the expiry of such extension time.

2.If we delay delivery, the customer can withdraw from the contract as legally prescribed and in written form. The customer may claim damages only as stipulated in item IX of these terms and conditions..

3. Any Acts of God and cases such as mobilization, war, riots, strikes, lockouts, operational disruptions, restrictions and lack of raw material and operating supply items etc. shall entitle us to postpone delivery as long as the impediment lasts plus an appropriate restart time after the end of the impediment. If the execution of the contract becomes unacceptable to one of the parties due to such special event, the party in question can withdraw from the contract. Damage claims by the buyer are excluded.

4. We shall have the right to partial deliveries. All partial deliveries will be invoiced separately and shall be paid separately.

## **VI. Shipment**

Shipment is effected ex works. The buyer carries the costs for shipment. Agreements that differ from these provisions become effective only if submitted in writing. If the customer asks us to carry out shipment at his expense, we reserve the right to choose the type of transport and dispatch route in particular consideration of our customer's preferences. The risk in this case passes to the buyer as soon as we have consigned the goods to the forwarder, the freight operator or the person or institution responsible for the shipping process ex our warehouse in China. We insure the goods against transport damage and other risks only on explicit request of our customer.

## **VII. Reservation of Title**

1. All goods delivered remain our property until all outstanding accounts from the business transaction have been settled. All property reserved from unsettled invoices shall be considered as security for our payment balance request.

2. If the reservation of title as agreed upon in item VII is not legally effective due to the legislation of the country where the reserved property is located or processed, the legal provision of the country in question coming closest to said item and guaranteeing best security shall be applied.

## **VIII. Warranty**

1. The warranty for the by us supplied goods is limited to the consignment as described in the order acknowledgement and the provisions in the technical documentation that were agreed upon in writing for the contractual relationship. The warranty period is one year from the day of handover.

2. Any notice of defects or complaint with regard to shortfall quantities or wrong deliveries need to be filed immediately in writing and state the reasons and shall be received by us no later than eight days after arrival of goods at their destination or, if it is a hidden defect, no later than five days after the defect was discovered.

3. If a notice of defects or complaint is filed, we shall have the right to inspect and check the

goods complained about in their unchanged state of being. If the notice of defects is justified and in time we can choose either to rework the goods complained about or to supply replacement free of charge. If reworks or replacements prove impossible, the customer can request a price reduction (reduction) or cancellation of the contract (transformation).

## **IX. Liability**

1. Our contractual and legal liability (e.g. due to non-performance, impossibility, default before or after the conclusion of the contract, default in performance of contract, defects of title, illegal action, obligation to make contributions to co-debtors etc.) is limited as in sentence 2 to malicious intent and gross negligence of our legal representatives, of our executives, and of the persons employed by us in the performance of their obligations. Our liability is limited to the typical and predictable damage. The limitation of liability also applies to any personal liability of our legal representatives and employees. Any customer claim made in accordance with the Chinese product quality law and other relevant laws and regulations shall not be affected.

2. It is the customer's own decision and responsibility how to use the delivered goods. Unless we have given written confirmation of specific characteristics and aptness of the products for a contractually defined purpose, any consulting with regard to the technical application of such products although done to the best of our knowledge can only be non-binding. Our liability for any consulting – carried out or not – that does not regard the characteristics and application of the delivered product is limited to the provisions as in sub-section 1.

## **X. Payment**

1. If not agreed otherwise, our invoices plus VAT are to be paid without any further deductions no later than 30 days from the invoice date.

2. If the customer delays payment he shall pay interest in the amount of 5 % above the base annual rate announced by the People's Bank of China to our advance on current account. We reserve the right to claim further damage due to delay of payments

3. We accept bills of exchange and/or cheques only if explicitly agreed upon in writing and only on account of payment. Bills of exchange need to be discountable. All costs and expenses for discounting shall be borne by the buyer.

4. If partial deliveries are not paid as due we shall have the right to refuse delivery of still open quantities from the order. The same is true for delivery obligations towards our customer from other orders if payments are due from one of the orders of this customer.

5. If the customer is in arrears with acceptance or payment of the goods, all accounts not yet settled by the customer become due immediately on the occurrence of such delay. The same applies if the customer stops his payments, if his property becomes subject to bankruptcy or composition or enforcement proceedings. In these cases we may execute the recall right and

claim the return of the goods due to our reservation of title. All the above cases entitle us to carry out open deliveries against advance payment only.

6. The buyer relinquishes his right to enforce any lien from other business transactions relating to the current business relationship. The offset of counterclaims is permissible only if found undisputed and legally binding.

## **XI. Final Provisions**

1. All legal relations and action between us and the buyer are subject to the laws of the People's Republic of China. Any application of the United Nations Conventions on Contracts for the International Sale of Goods of 11 April 1980 is excluded.

2. Place of performance for all payments is Kunshan. Any disputes arising out of or in connection with a contract with buyer, including any question regarding its existence, validity or termination shall be settled through friendly consultations between both parties. In case no settlement can be reached through consultations, the dispute shall be submitted to the China International Economic and Trade Arbitration Commission (CIETAC), Shanghai Sub-Branch, for arbitration which shall be conducted in accordance with the Commission's arbitration rules being in force at the time of applying for arbitration. The arbitral award is final and binding upon both parties. The language of the arbitration proceedings shall be English. The place of the arbitration shall be Shanghai.

3. Should any individual provision or future provision to the above terms and conditions and the contract be or become void, illegal or unenforceable, the validity of the remaining provisions hereof shall in no way be affected. The same shall apply if the contract is found to have a loophole. In such case the void and/or illegal and/or unenforceable provision or provisions and/or loophole shall be replaced by relative provisions coming as close as possible to the sense and spirit and purpose of the contract.

4. The language of the General Terms of Sale and Delivery and the contract is English. The English wording overrules all other languages that may be used in addition.