

International Terms and Conditions of Sale and Delivery

1. General

a) These General Terms and Conditions of Business (“GTC”) govern the cooperation between Warendorfer Küchen GmbH and Purchaser and are designed to allow us to handle all orders to our customers’ fullest satisfaction.

b) These GTC apply to all of our deliveries and services rendered to businesses within the meaning of Sec. 310 (1) BGB [*German Civil Code*]. They apply exclusively. Any Purchaser terms and conditions of purchase shall not apply unless we have agreed to them in writing in a particular case. In the case of continuous business relations these GTC will also apply to all future transactions, even if not expressly agreed again.

c) All orders, confirmations of acceptance and subsidiary agreements, amendments or other arrangements made before or upon the receipt of an order must be set out in writing to be legally effective.

2. Conclusion of contract, order modifications, rescission

a) Unless agreed or indicated otherwise, our offers remain subject to change and nonbinding. A contract becomes effective only upon the written conformation of an order received by us, but at the latest upon Purchaser’s acceptance of the delivery. Offers including several kitchens are valid for the quantities offered.

b) Orders will be modified at Purchaser’s request, provided that Purchaser bears all costs incurred in connection with the order modification.

c) We reserve the right to change the design, measurements and weight of the object to be delivered, provided such changes appear acceptable for Purchaser in an objective assessment of all circumstances.

3. Delivery, delay in delivery, force majeure

a) Any delivery periods or delivery deadlines indicated by us are without any commitment unless expressly specified or agreed with Purchaser as binding. We shall use our best efforts to meet any agreed delivery deadlines.

b) We are entitled to render partial deliveries and partial services at a reasonable extent, which may be billed separately.

c) The installation of gas, water, power and other connections as well as water drains does not form part of the delivery. Purchaser is responsible for setting up the necessary connections in compliance with applicable regulations.

d) Apart from delivery, Purchaser may claim compensation of any damage caused by a delay if we acted with intent or gross negligence. In the event of slight negligence liability will be limited to damage foreseeable at the time of conclusion of the contract and characteristic for the contract. In the event that we have not received at all or in due time supply of any goods ordered, we shall not be in default with the delivery to Purchaser unless we are responsible for having received such supply with delay or not at all. Force majeure, official orders and operational breakdowns at our site, e.g. traffic or business disruptions, industrial disputes, shortage of transportation means, fire damage, which temporarily hinder us without any fault on our part or imputable to us from meeting agreed deadlines, will extend such deadlines by the duration of the hindrance caused by these circumstances. Either contracting party has the right to withdraw from the contract if any such reason prevents performance for more than four months. This shall not affect any other rights of rescission of Purchaser.

e) In the event of call-off orders Purchaser must take delivery of the object of purchase no later than three months from the date of the order confirmation. The delivery periods are subject to the foregoing terms and conditions.

f) In compliance with the applicable German Packaging Regulation we are responsible for taking back and recycling the storage packaging; all system-related costs (e.g. rented containers) will be borne by Purchaser.

4. Prices, payment, default in payment, retention, set-off

a) Unless expressly agreed otherwise, all prices will be EXW Warendorf, Incoterms 2000, plus value added tax at the statutory rate as applicable from time to time, if appropriate.

- b) The Purchaser has to submit a security for the agreed purchase price and all further costs. We will agree with the Purchaser on the kind of security. With the reception of the full security we will start the manufacturing. The delivery time is calculated from the time we receive the security.
- c) If the parties have not agreed on the price at the time the contract is concluded, the price shall be the list price valid on the day of the conclusion of the contract.
- d) If Purchaser makes default in payment we will have the right to claim statutory default interest. Nothing in this shall affect Purchaser's right to assert a lower, nor our right to assert a higher, loss caused by the default.
- e) Purchaser may assert a right of retention with respect to our claims only on the basis of claims from the same contractual relationship which are uncontested, ready for a decision or established by final enforceable judgment. Any set-off by Purchaser is excluded unless Purchaser's counterclaim is uncontested, ready for a decision or established by final enforceable judgment.
- f) Prices are calculated and invoiced in Euro, unless expressly agreed otherwise.

5. Place of performance, passing of risk

- a) Except where agreed otherwise, Warendorf shall be the place of performance for all obligations of delivery and payment under the contractual relationship.
- b) All goods will be dispatched ex our domicile respectively our distribution center, at Purchaser's risk. The risk will pass to Purchaser once the consignment has been handed over to the person effecting the dispatch or has left our warehouse for dispatch. If the contract partner fails to accept the goods in due time although they were offered to him, the risk shall pass to Purchaser upon the notification that the goods are ready for dispatch.

6. Reservation of title

- a) All goods delivered shall remain our property as reserved goods until all claims under the contractual relationship and all other claims that we subsequently acquire, on whichever legal grounds, against Purchaser in direct relation to the goods delivered, have been settled. The same applies where any payments have been effected towards specially designated claims. Further, all goods delivered shall remain our property as reserved goods until all other claims that we acquire against Purchaser, now or in the future, on whichever legal grounds (including all unsettled balances from current account), have been settled.
- b) Purchaser has the right to resell the goods in the regular course of business. To secure all of our unsettled claims against Purchaser, Purchaser hereby assigns to us his claim against his customer arising from the resale, and we hereby accept this assignment. As long as we remain the proprietor of the reserved goods, we are entitled to revoke the authorization to resell the goods if there is an objectively justified reason.
- c) Purchaser is revocably authorized to collect the assigned claims. This shall not affect our authority to collect the claims, however, we undertake not to collect the claims as long as Purchaser properly meets his payment obligations.
If Purchaser fails to properly meet his payment obligations with the consequence that we are authorized to collect the claims, Purchaser will be obliged, on our request, to disclose to us the assigned claims and their debtors as well as all information required to collect the claims, to submit the pertinent documents and to inform the debtors of the assignment.
- d) If the reserved goods are processed, combined or mixed with other goods, we are entitled to ownership of the new product in the relation of the invoice value of the reserved goods to the invoice value of the other goods. Any processing, combining or mixing in the regular course of business shall be deemed effected on our behalf. If the reserved goods are sold together with other goods after processing, combining or mixing, the claim resulting from the resale can only be assigned up to the amount of our invoice value relative to the invoice value of the goods sold together with the reserved goods. In the event of a sale of goods we hold a co-ownership share in, the claim assigned to us shall correspond to our share in the co-ownership. We hereby offer to grant Purchaser a contingent right to the co-ownership shares that are created. Purchaser accepts this offer. The co-ownership shall pass to Purchaser upon settlement of all claims we are entitled to.
- e) If the reserved goods are combined with the real property of a third party, Purchaser hereby assigns to us the compensation claim arising for Purchaser, including all ancillary rights, in the amount of the share which corresponds to the value of the reserved goods. If we co-own the reserved goods, the assignment shall extend to the amount which corresponds to our co-

ownership share. If Purchaser is entitled to claim the creation of a collateral mortgage pursuant to Sec. 648 BGB from his customer, Purchaser will assign this claim to us in the amount defined above. We hereby accept the above assignments.

f) Purchaser is obliged to keep safe the goods owned or co-owned by us and to effect and maintain adequate insurance coverage for them. Purchaser hereby assigns to us the claims Purchaser will be entitled to assert against the insurance company in the case of a damage as far as these claims refer to goods owned or co-owned by us; we hereby accept this assignment.

g) As long as the reservation of title remains valid, any pledging, assignment by way of security, lease or other transfer or change of the object of purchase impairing our security will require our prior written consent. This shall not affect Purchaser's right to resell the goods in the regular course of business at the aforementioned conditions.

h) Purchaser will immediately notify us in writing of any intervention by third parties, in particular attachments of the object of purchase, and promptly inform the third party of our reservation of title.

i) If Purchaser has suspended payments not only temporarily, petitions the opening of insolvency proceedings against its assets, or insolvency proceedings are opened against Purchaser's assets, Purchaser, on our request, will be obliged to return to us the object of purchase still owned by us. Further, if Purchaser acts contrary to contract, in particular in the event of default in payment, Purchaser, subject to a reminder, will be obliged to return the object of purchase to us. The taking back of the object of purchase is considered a rescission of the contract only if expressly declared so by us. Finally, in any such case Purchaser will be obliged to immediately provide us with a list of the remaining reserved goods, including reserved goods that have been processed, and with a list of the claims against third party debtors.

j) We have the right to fix a reasonable deadline for Purchaser to meet his liabilities and, after the expiry of the deadline, to dispose of the secured object of purchase in a private sale at Purchaser's expense by crediting the payment received against the purchase price.

k) On Purchaser's request we, at our option, are obliged to waive the reservation of title and/or to release securities from assignments by way of security and assignments of future claims if Purchaser has fulfilled all claims relating to the object of purchase or if the realizable value of all securities granted to us under reservation of title, assignment by way of security and assignment of future claims not only temporarily exceeds the total amount of our claims against Purchaser by more than 10 %.

7. Warranty, limitation period

a) Purchaser's warranty claims are excluded unless Purchaser has duly fulfilled his duties of inspection and notification of defects pursuant to Sec. 377 HGB [*German Commercial Code*].

b) Defects caused by improper handling or any repairs or interferences carried out without our consent will not give rise to warranty claims.

c) We accept liability in accordance with the legal provisions for defects that are notified in due time, subject to the following conditions: In the event of a defective delivery Purchaser, at our option, will be entitled to repair or replacement delivery (subsequent performance) at no charge. Subsequent performance is deemed failed if a defect cannot be removed after at least two attempts at repair respectively replacement deliveries, or at least three attempts at repair in technically complex cases, or if any further attempt at repair or a further replacement delivery is unacceptable for Purchaser or impossible, unreasonably delayed or seriously and definitely refused. Any parts replaced in connection with the repair become our property.

d) Purchaser is not entitled to any claims based on the expenditure incurred by the subsequent performance (e.g. transportation costs, road expenses and tolls, labor and material costs) if the expenditure has increased because the purchased goods were after delivery shipped to a place other than Purchaser's domicile or place of business, unless such shipping is in accordance with the designated use of the goods. In the event of an unjustified notification of defects for reasons within Purchaser's control, Purchaser will compensate us for the expenses incurred in this context.

Purchaser is entitled to claim damages or compensation based on defects only where our liability is not excluded or limited in accordance with the following section of these Terms and Conditions of Sale and Delivery. Further claims or claims other than those stipulated in this sec. 7 based on a material defect are excluded.

e) Warranty claims become time-barred one year after the delivery of the object of purchase. Nothing in this shall affect the limitation period in the event of delivery recourse pursuant to Sec.

478, 379 BGB, which shall be no longer than five years from the delivery of the defective product.

8. Liability, limitation period

- a) In all cases where Purchaser is obliged to pay damages instead of performance, we may claim 20% of the purchase price as damages, unless a higher loss is proven. Purchaser is at liberty to prove that no loss has occurred or that the loss incurred is substantially lower.
- b) We accept liability for any damage caused by us or by our vicarious agents, intentionally or with gross negligence. In the event of a slightly negligent breach of an essential contractual obligation (major obligation), our liability will be limited to damage foreseeable at the time of conclusion of the contract and characteristic for the contract. We do not accept liability for any slightly negligent breach of accessory obligations which are not major contractual obligations. Nothing in this shall affect the liability in the event of malicious concealment of defects or a warranty as to quality, to the liability for claims under the Product Liability Act and to claims based on culpable injury to life, limb or health. This shall not entail a reversal of the burden of proof to Purchaser's disadvantage.
- c) With the exception of claims arising from tortuous acts or product liability, the above claims for damages become time-barred one year after Purchaser's receipt of the goods. The limitation period of warranty claims is governed by the provisions of sec. 7 e).

9. Damages and compensation arising from rescission

If the purchase contract is rescinded due to a culpable breach of contract by Purchaser, we may assert claims to the following:

- a) special expenses incurred on account of the contract, such as commissions, shipping charges and similar;
- b) compensation for any and all damage we sustained due to Purchaser's fault;
- c) a remuneration for the transfer of the goods for use and the decrease in value caused thereby. The remuneration will normally be calculated as follows, depending on the stability of the goods' value: for rescission and transfer after delivery within the first three months: 30% of the sales price, and 3% of the sales price for each additional month. However, Purchaser may prove that a lower or no decrease in value has occurred, while we may prove that a higher decrease in value has occurred.

10. Place of jurisdiction, governing law

- a) Warendorf shall be the place of jurisdiction for any and all disputes arising between us and Purchaser, on whichever legal grounds, if Purchaser is a business or a legal person under public law or is not domiciled in Germany. However, we have the right to sue Purchaser at any other legal place of jurisdiction.
- b) This agreement is governed by German law with the exclusion of the UN Sales Convention.

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