



## General terms and conditions of

- J. Wagner GmbH , Otto-Lilienthal-Str. 18 , DE-88677 Markdorf
- Walther Spritz- und Lackiersysteme GmbH, Kärntner Strasse 18-30, DE-42327 Wuppertal

### 1. GENERAL INFORMATION

1.1 The following terms and conditions apply to contracts concluded with one of the above-mentioned companies of the Corporate Group J. WAGNER, which acts as the seller and/or supplier (hereinafter referred to in each case as the "**Supplier**"). However, they shall only apply if the Customer is an entrepreneur within the meaning of § 14 German Civil Code (BGB), a legal entity under public law or a special fund under public law. They shall also apply to all future deliveries, services or quotations carried out for the Customer, even if they are not the subject of separate agreements.

1.2 The Customer's terms and conditions shall not apply, even if the Supplier does not separately object to their validity in individual cases. Should the Supplier refer to a letter containing or referring to the Customer's terms and conditions of business, this shall not constitute any agreement with the validity of said terms and conditions.

1.3 If the Contract deals not only with the manufacture or delivery of goods, but also the project planning and/or the assembly/commissioning/maintenance of plants and plant components, the corresponding Special Terms and Conditions shall apply in addition. If they are not already enclosed with the quotation, they shall be sent on request or shall be available for download from the respective website "[www.wagner-group.com](http://www.wagner-group.com)".

1.4 Unless otherwise agreed in writing, the Contract is only concluded between the Customer and the Supplier that has accepted the order.

### 2. CONCLUSION OF CONTRACT

2.1 The Supplier's quotation is subject to change without notice. In each case, the Customer shall submit a binding contract offer. Unless otherwise stated in this contractual offer, the Supplier is entitled to accept this contractual offer in writing or in text form within three (3) calendar weeks after receipt of the quotation.

2.2 The documents belonging to the quotation, such as illustrations, drawings, weight/performance/consumption data are only approximate values unless explicitly designated as binding.

2.3 The Supplier hereby reserves all property rights and copyrights in respect of cost estimates, drawings, samples and other documents, including those in electronic form. Said items may not be reproduced and/or made accessible to third parties.

### 3. PRICES AND PAYMENT

3.1 Unless otherwise agreed, all prices are ex works. The shipping costs incurred for each order are calculated according to expenditure. All prices apply in each case plus statutory value added tax.

3.2 In each case, the invoice amount is due with invoicing. The Supplier is – even within the framework of an ongoing business relationship – entitled at any time only to carry out deliveries, in whole or in part, against advance payment.

3.3 Offsetting is only possible against counterclaims of the Customer which are not disputed by the Supplier or have already been legally established. The Customer is also entitled to offset against claims of the Supplier if the Customer asserts claims for defects or counterclaims arising from the same contractual relationship. This also applies accordingly to the Customer's right of retention. In all other cases, offsetting rights and rights of retention are excluded.

3.4 The minimum order value is EUR 50 (or the equivalent value in local currency).

### 4. RETURN OF GOODS

If the Supplier agrees to take back delivered goods as a gesture of goodwill without any legal obligation, the Supplier shall charge a lump sum of 20% of the net invoice amount for the goods concerned as compensation for the costs of re-storage and the associated contractual and administrative costs, whereby the Customer is entitled to prove that the Supplier's actual expenses are lower. The returned goods must be part of the Supplier's current product range, undamaged and in a saleable condition. The



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freight costs of the return delivery shall be borne by the Customer. Return deliveries may only be arranged with the Supplier's prior approval.

### 5. DEFAULT

5.1 If, after conclusion of the Contract, it becomes apparent (e.g. through an application for the opening of insolvency proceedings) that the Supplier's claim to the purchase price is endangered by the Customer's lack of ability to pay, the Supplier shall be entitled to refuse performance in accordance with the statutory provisions and – if necessary after setting a deadline – to withdraw from the Contract (§ 321 BGB). In the case of contracts for the manufacture of unique items (custom-made products), the Supplier may declare its withdrawal from the Contract immediately, whereby the statutory provisions governing the obligation to set a deadline shall remain unaffected. If the entire remaining debt is not paid immediately at the Supplier's request, the Customer's right of use and ownership in respect of the delivery item shall expire. The Supplier is entitled either to take back the delivery item – whereby its claims shall remain valid pending full payment – or to withdraw from the Contract. If the delivery item is seized, all associated costs shall be borne by the Customer. In the event of withdrawal from the Contract, the Customer shall compensate the Supplier for any reduction in value – even if this is not attributable to the Customer – and for any loss of profit in addition to compensation for use of the delivery item.

5.2 In case of default, statutory default interest shall be payable. The Supplier reserves the right to assert further claims for damages due to the default.

5.3 If the Customer is in default of acceptance of the ordered goods even after expiry of a grace period, the Supplier may withdraw from the Contract and claim damages of up to 15% of the order value (net price). The Supplier reserves the right to assert claims for damages in a higher amount. The Customer has the right to prove that no damages at all have occurred or that the damages are considerably lower than the claimed lump-sum amount.

### 6. DELIVERY TIME, DELAY IN DELIVERY, DAMAGES DUE TO DELAY

6.1 The contractually agreed delivery period shall commence upon dispatch of the order confirmation, but not before receipt of the Customer's application for the documents, approvals and releases that must be obtained by the Customer on the basis of contractual agreements or the agreed collaborative measures. A further precondition for the start of the delivery period is the receipt of any agreed down payment.

6.2 If the Supplier is unable to meet binding delivery deadlines for reasons for which it is not responsible (non-availability of performance), it shall inform the Customer of this without delay and, at the same time, shall communicate the anticipated new delivery period. If performance is also not possible within the new delivery period, the Supplier is entitled to withdraw from the Contract in whole or in part, whereby any consideration already provided by the Customer shall be refunded immediately. In this sense, non-availability of performance shall exist in particular in the event of non-timely self-supply by the Supplier by means of its sub-suppliers, provided that the Supplier has concluded a congruent hedging transaction. The Supplier's statutory rights of withdrawal and termination as well as the statutory provisions governing the execution of the Contract in the event of an exclusion of the performance obligation (e.g. impossibility or unreasonableness of performance and/or subsequent performance) shall remain unaffected.

6.3 If dispatch is delayed due to circumstances for which the Customer is responsible, it shall be charged the costs incurred for storage of the goods at the Supplier's works, starting one month after notification of their readiness for dispatch, and in the minimum amount of 0.5% of the gross invoice amount for each month. The Customer reserves the right to prove that these costs were actually lower.

### 7. TRANSFER OF RISK



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7.1 Delivery is – depending on the respective Supplier - EXW D88677 Markdorf, Germany (J. Wagner GmbH), EXW DE-42327 Wuppertal / EXW DE-57290 Struthütten (Walther Spritz- und Lackiersysteme GmbH) or EXW DE-58566 Kierspe (Reinhardt-Technik GmbH) (Incoterms ® 2020).

7.2 The risks of accidental loss and accidental deterioration of the delivery item shall pass to the Customer at the latest upon notification that the goods are ready for dispatch at the Supplier's works and/or at the latest upon handover of the goods to the forwarder/carrier.

7.3 If acceptance has been agreed, this shall be decisive with regard to the transfer of risk.

7.4 If dispatch is delayed due to circumstances for which the Customer is responsible, the risk shall pass to the Customer upon receipt by the latter of the notification that the delivery item is ready for dispatch.

## 8. LIABILITY FOR MATERIAL DEFECTS, OBLIGATION TO GIVE NOTICE OF DEFECTS

8.1 The delivery item shall be inspected immediately upon receipt. The Customer must report any obvious defects to the Supplier in writing without delay in order to prevent the loss of the former's defect-related rights. Hidden defects must also be reported in writing immediately after their discovery in accordance with the provisions of § 377 German Commercial Code (HGB).

8.2 In the case of a defect for which the Supplier is responsible, the Supplier shall be entitled to remedy the defect at its discretion via free repair or replacement. All replaced parts shall become the property of the Supplier. The Supplier reserves the right to rework the product concerned with new or reconditioned parts or to replace it with an identical or equivalent product if, in the Supplier's opinion, repair of the product would not be economical.

8.3 The necessary expenses for the subsequent performance, in particular for transport, travel, labour and material costs as well as installation and dismantling costs, shall be borne by the Supplier if a defect is actually present. Otherwise, the Supplier may demand that the Customer reimburse the costs (in particular the inspection and transport costs) arising from the unjustified demand to remedy the defect, unless the absence of the defect was not apparent to the Customer. This applies insofar as no other agreement has been concluded in individual contracts or in the purchasing conditions.

8.4 The Supplier offers no warranty for damages caused by the following circumstances: unsuitable or improper use, faulty assembly or faulty commissioning by the Customer or by third parties engaged by it, natural wear and tear, faulty or negligent handling, use of unsuitable operating materials or replacement materials, defective construction work, improper chemical, electromechanical or electrical influences, unless the Supplier is responsible for the damages.

8.5 The Customer shall only be entitled to have the defect remedied at its own discretion and at the Supplier's expense if the Supplier is in default of its obligation to remedy the defect. Only in urgent cases where operational safety is endangered shall the Customer be entitled to remedy the defect itself or to have it remedied by third parties before the Supplier is in default, and to demand reimbursement of its costs from the Supplier in a reasonable amount.

8.6 Claims for material defects shall expire one year after delivery of the respective item. This does not apply insofar as the law pursuant to § 438 (1) (2) (buildings and objects for buildings), § 445b (right of recourse) and § 634 (a) (1) (2) BGB (building defects) prescribes mandatory longer periods, or for contracts which are subject to the German construction contract procedures (VOB/B) as a whole.

8.7 No warranty is given for repairs which the Supplier undertakes without a corresponding legal obligation. Excepted from the above is the Supplier's liability for damages for which it is responsible.

8.8 The Customer's right of recourse against the Supplier pursuant to Sections 478 and 445b BGB is limited to cases where the Customer has not concluded an agreement with the Supplier exceeding the scope of the statutory warranty claims.

8.9 Without a written agreement, the Supplier provides no assurance for the fact that the equipment or systems supplied by it comply with foreign regulations.

8.10 In all other cases, the Supplier's liability is subject to the provisions in Section 9. Any further claims for material defects are excluded.

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## 9. LIABILITY

9.1 For property damage and consequential property damage suffered by the Customer due to slightly negligent breaches of duty on the part of the Supplier, the Supplier's obligation to pay compensation shall be limited to the compensation paid by the Supplier's liability insurance. This limitation of liability also applies to the personal liability of the Supplier's employees, staff, representatives and vicarious agents. The Supplier is prepared to provide the Customer with a confirmation of insurance upon request. However, this limitation of liability shall only apply if the sum insured corresponds to the typical levels of property damage and consequential property damage in such cases. To the extent that the insurance does not apply unless the sum insured is exceeded, the Supplier shall assume subsidiary liability vis-à-vis the Customer in accordance with Section 9.2.

9.2 Further claims for damages and reimbursement of expenses by the Customer are excluded. This shall not apply to inalienable claims under the German Product Liability Act (Produkthaftungsgesetz), or in cases of intent or gross negligence, or in cases of injury to life, body or health, or in the event of a culpable breach of an essential contractual obligation (an obligation whose fulfilment makes the proper performance of the Contract possible in the first place and upon whose observance the contractual partner regularly relies – and is entitled to rely). In the event of a culpable breach of an essential contractual obligation, however, the Supplier shall only be liable for the foreseeable damages in the amount typical for the Contract, unless it is a case of intent or gross negligence or injury to life, body or health. A change in the burden of proof to the detriment of the Customer cannot be inferred from the provisions of Section 9.

9.3 To the extent that the Customer is entitled to assert claims for damages pursuant to this Section 9.1, such claims shall expire upon expiry of the limitation period for claims for material defects pursuant to Section 8.6.

## 10. RETENTION OF TITLE

10.1 The Supplier shall retain ownership of all goods delivered by it pending full payment of all claims arising from the business relationship with the Customer (current account reservation). If the delivered equipment is installed in a building or connected to other equipment, the Supplier's ownership shall also extend proportionately to the equipment created via said installation and to the finished goods. If the value of the delivery items, which are under retention of title and which serve as security for the Supplier, exceeds the value of the Supplier's total claim by more than 20%, the Supplier shall release the goods to the same extent. The choice of the security to be released is at the Supplier's discretion.

10.2 The Customer has the right – which may be revoked by the Supplier at any time – to resell the delivered goods within the framework of proper business transactions, unless the claim resulting from the resale has already been assigned to others; the Customer's right to resell the goods shall also lapse if the Customer suspends its payments. In the event of resale of the reserved goods, the Customer hereby assigns to the Supplier by way of security the receivables due from the purchaser – in proportion to the co-ownership share if the Supplier is the co-owner of the reserved goods. The same applies to other receivables that take the place of the secured goods or otherwise arise in respect of the secured goods.

10.3 The Customer is authorised to collect the assigned receivables as long as it fulfils its payment obligation vis-à-vis the Supplier; the Customer shall immediately transfer the amounts collected by it to the Supplier to the extent that the Supplier's receivables are due. In the event of a breach of the Customer's payment obligation, the Supplier is entitled to disclose the assignment of the receivables to the Customer's own customers.

10.4 The Supplier is entitled to demand the surrender of the reserved goods if the Customer fails to meet its payment obligations in respect of a specified calendar date or deadline. The demand for surrender of the delivery item shall also constitute a withdrawal from the Contract.



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10.5 The Customer may neither pledge the delivery item nor assign it as security. In case of seizure of the delivery item and/or its confiscation and/or other dispositions by third parties, the Customer shall inform the Supplier immediately.

10.6 The Customer shall treat the contractual object with care and, in particular, shall insure it sufficiently at its replacement value against fire, water and theft, and shall provide a corresponding confirmation of insurance upon request. To the extent that maintenance and inspection work is necessary, the Customer shall carry this out in good time at its own expense.

## 11. PLACE OF PERFORMANCE AND JURISDICTION, ARBITRATION AGREEMENT

11.1 The place of performance for all obligations arising from this contract is the respective registered office of the Supplier.

11.2 If the Customer has its registered office within the EU or EEA, the exclusive – also international – place of jurisdiction for all disputes arising from the contractual relationship shall be the Supplier's registered office if the Customer is a merchant within the meaning of the German Commercial Code (Handelsgesetzbuch), a legal entity under public law or a special fund under public law. However, the Supplier is also entitled to take legal action at the court which is responsible for the registered office of the Customer.

11.3 If the Customer has its registered office exclusively outside the EU or EEA, all disputes or claims arising from this contract, including disputes concerning its validity, infringement, dissolution or nullity, shall be submitted to the International Arbitration Institution of the Austrian Federal Economic Chamber (VIAC) and shall be finally decided in accordance with the Arbitration Rules (Vienna Rules) VIAC by three arbitrators appointed in accordance with said rules. The contractual relationship shall be governed by German law, excluding the International Sales Convention (CISG) and the conflict-of-laws rules of international private law. The language of the arbitration proceedings shall be German. The arbitration proceedings shall be conducted in Vienna.

## 12. FORCE MAJEURE/ ACT OF GODS

12.1 Acts of God, industrial disputes, riots, war, pandemic, official measures, compliance with the applicable newly adopted export regulations and other unforeseeable and unavoidable events, despite the application of due care, relieve the parties from their service obligations for the duration of the disruption and to the extent of their effect. The parties are obliged to make available to any other affected parties, to the extent that it is reasonable to do so, without delay the necessary information and to act in good faith to adapt their contractual obligations to the changed circumstances.

12.2 Should the events giving rise to the relief from the performance of duties last for longer than three (3) months or if it is foreseeable that the events will last longer than three (3) months, the respective service providers are entitled to withdraw from the Agreement that has been affected by the events unless the parties decide to amend the Agreement to take into account the new circumstances arising from such force majeure event. If the Agreement is a continuing obligation, the relevant service provider is accordingly entitled to an extraordinary termination.

12.3 The occurrence of a force majeure event may however not relieve the relevant party from its liability for any negligent conduct or lack of diligence to remedy the situation or to remove its cause in a reasonable and adequate manner. A force majeure event may not give rise to a claim for damages.



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### 13. APPLICABLE LAW AND LANGUAGE

13.1 The mutual legal relationships shall be governed exclusively by the substantive law applicable in the Federal Republic of Germany, excluding the conflict-of-laws rules and excluding the UN Convention on Contracts for the International Sale of Goods (CISG).

13.2 The prerequisites for and effects of the retention of title pursuant to Section 10 are, however, subject to the applicable laws at the storage location of the respective item, to the extent that the choice of German law is inadmissible or ineffective.

13.3 The contractual language is German. Where the meanings of the German and English texts of these General Terms and Conditions differ, the meaning of the German text shall prevail.

### 14. SEVERABILITY CLAUSE

In the event of the legal invalidity or ineffectiveness of individual or multiple contractual provisions or sections of the present General Terms and Conditions, the remaining provisions of the Contract shall remain legally valid.

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