

General business terms

§ 1 General information - scope

- (1) Our business terms shall apply exclusively for all business with customers; we shall not recognise contradictory terms and conditions or conditions of the customer which deviate from our business terms unless we had explicitly approved their validity in writing before conclusion of the contract. Our business terms shall also apply if we carry out the delivery to the customer without reservation in the knowledge of contradictory or terms and conditions of the customer which deviate from our business terms.
- (2) Insofar as not otherwise agreed in a written contract the contents of the general business terms contain the agreements concluded between us and the customer for the purpose of execution of contracts.
- (3) Our business terms and conditions shall only apply towards entrepreneurs and the group of persons listed in § 310 Par. 1 BGB [Civil Code].
- (4) Our business terms and conditions shall also apply to all future business with the customer insofar as it concerns legal transactions of a related kind.

§ 2 Offer and conclusion of the contract

- (1) If the order is to be qualified as an offer according to § 145 BGB then we can accept this within 2 weeks. Furthermore no answer to an offer will be regarded as declined.
- (2) We reserve the property rights and copyrights to diagrams, drawings, calculations and other documents. This shall also apply to those written documents which are described as "confidential". Before forwarding these to third parties the customer requires our explicit written consent.

§ 3 Prices; terms of payment; default; right of withdrawal; cancellation

- (1) Insofar as not otherwise derived from the order confirmation our prices shall apply "ex works", excluding packaging. Costs for the packaging will be invoiced separately.
- (2) The statutory value-added tax is not included in our prices; it shall be disclosed separately in the invoice in the statutory amount on the day of the invoicing.
- (3) The deduction of cash discount requires a separate written agreement.
- (4) Insofar as not otherwise derived from the order confirmation the purchase price is due and payable net (without deduction) prior to delivery. The statutory regulations shall apply relating to the consequences of the default of payment.
- (5) Default of payment of the customer entitles us to withdraw from the contract after the set and unsuccessfully passed payment deadline for subsequent performance and to request damages compensation for non-performance. If delivered objects are taken back we are entitled to request reimbursement for the expenses as well as compensation for the use and reduction in value in line with § 3 Subclause (6) within the meaning of flat rate compensation for damages.
- (6) The claim for compensation as of Subclause (5) above is assessed as follows:
 - a) 10 % of the purchase price as compensation for pro rata business costs;
 - b) In addition to lit. a) when taking the delivered goods back
 - aa) within the first year 60 % of the purchase price
 - bb) within the second year 90 % of the purchase price.
- (7) The customer is at liberty to prove to us that only less damages were suffered with reference to the aforementioned flat rate compensations for damages relating to Subclause (6).
- (8) We have a right to withdraw from the contract if the customer provided false information about his person or about facts which were a condition for his creditworthiness, suspends his payment or an application has been filed for insolvency proceedings over his assets or he submitted the assurance of assets according to § 802 c ZPO. The regulations agreed upon under Subclause (6), concerning flatrate compensations for damages shall also apply to these cases.
- (9) The customer is only entitled to rights to offset if his counter-claims have been determined final and binding, are undisputed or have been recognised by us. In addition, he is only insofar authorized to exercise a set-off right to the extent that his counter-claim is based on the same precise contractual relationship.

- (10) We reserve the right, for contracts with an agreed delivery time of more than four months, to increase the prices in line with the occurred cost increases owing to collective wage agreements or material price increased in. If the increase is more than 5 % of the agreed price the customer shall have a right to withdraw from the contract which he can exercise within 14 days after notification of the increased price otherwise the price increase shall be deemed as accepted.
- (11) Special work on the product (e.g. special lacquering; printing with advertising means, re-design of the product for advertising, setup assembly work) will be invoiced additionally and shall be due and payable directly after provision of the service. The settlement for additional work shall be carried out according to the prepared offer or number of hours.
- (12) In the event of a cancellation of the purchase agreement, for which the customer is responsible, we are entitled to demand compensation for the resulting damage, including additional expenditures (e.g. storage costs). For this purpose we will charge a lump-sum compensation of up to 20% of the net order value. The proof of a higher damage and our statutory claims shall remain unaffected. The customer has the right to prove that no damage has been caused or that the damage is considerably lower. Insofar as the customer has made an advance payment we reserve the right of set-off and retention.

§ 4 Delivery time; installation

- (1) Any agreements regarding a binding delivery and performance time shall only be valid if they have been made in writing.
- (2) Compliance with the delivery and performance time is subject to the company receiving correct and on-time deliveries from its suppliers. In the event that delays should become likely, we will inform the customer of this as quickly as possible.
- (3) If non-observance of the delivery and performance times is due to an energy shortage, labour disputes, force majeure or other circumstances that are beyond our control, the delivery and performance times shall be appropriately extended. In such an event, we will inform the ordering party of the beginning and end of these circumstances as quickly as possible.
- (4) The delivery and performance time shall be considered as having been complied with if the item to be delivered has left our plant, or is ready to be dispatched, by the expiry of this period, or if the service in question has been performed before expiry of this period. Insofar as a formal acceptance has been agreed, then – barring any justified refusal of acceptance – this shall be based on the acceptance date, taking into account the indication of readiness to issue acceptance.
- (5) The delivery time specified by us shall only commence once all technical questions have been resolved.
- (6) Compliance with our delivery obligations is dependent on the correct and timely fulfilment by the customer of all their obligations. We reserve the right to plead non-fulfilment of contract.
- (7) Insofar as the delivery should include installation work, the customer must ensure that the installation location has been prepared as contractually stipulated by the agreed date, and that it is freely accessible for our employees and/or our subcontractors. Any additional costs arising from non-compliance herewith shall be borne by the customer. We have the right to commission subcontractors.
- (8) Should the customer be in default of acceptance or should the customer culpably breach any other duty to cooperate, we shall be permitted to demand compensation for any damages arising therefrom, as well as for any additional expenditures rendered necessary. Any further claims shall remain unaffected hereby.
- (9) Insofar as the conditions specified in Subclauses (3) or (4) should pertain, the risk of accidental loss and accidental deterioration of the purchased item shall be passed to the customer as of the time at which the customer has fallen into default of acceptance or debtor's delay.
- (10) Otherwise, in the event of delayed delivery, we shall be liable for a flat compensation fee for delay amounting to 3 % of the value of the delivery for every full week of delay, but no more than 15 % of the value of the delivery in total.
- (11) All of the customer's other statutory claims and rights shall remain unaffected.

§ 5 Passing of risk; transport insurance

- (1) Insofar as not otherwise derived from the order / offer confirmation delivery "ex works" is agreed. The passing of risk for the object to the customer is therefore when the shipment is ready packed to dispatch and available for pick up.
- (2) Insofar as requested by the customer we will cover the delivery by transport insurance, the accordingly incurred costs shall be borne by the customer.

§ 6 Liability for defects

- (1) The term of warranty for defects is 1 year and begins with delivery to the customer.
- (2) Claims for defects of the customer presume that he has properly satisfied his responsibilities for inspection and report of complaints owed according to § 377 HGB.
- (3) Insofar as the object of purchase features a defect for which we are responsible, we are entitled to the supplementary performance in the form of the remedy of defects or to delivery of a new faultless object.
- (4) If the supplementary performance fails then the customer is entitled at his choice to withdraw from the contract or reduction.
- (5) We shall be liable according to the statutory provisions insofar as the customer asserts claims for damages which are due to wilful intent or gross negligence including the wilful intent or gross negligence of our performing or vicarious agents. Insofar as we are not accused of any wilful breach of contract the liability for damages is limited to the precise and objective occurring damages.
- (6) We shall be liable according to the statutory provisions insofar as we culpably breach an essential contractual obligation; in this case however the liability for damages is limited to the precise and objective occurring damages.
- (7) Insofar as the customer is entitled to a claim for compensation of the damages instead of the performance our liability is also limited within the framework of Subclause (3) to compensation for the precise and objective occurring damages.
- (8) The liability owing to culpable injury to life, the body or the health remains unaffected; this shall also apply to the mandatory liability according to the Product Liability Act.
- (9) Insofar as not otherwise regulated above the liability is, irrespective of legal basis, excluded.
- (10) If a defect is due to the misconduct of the customer or persons which he used as performing or vicarious agents the customer undertakes to reimburse us for all costs incurred in connection with his unjustified report of a complaint.

§ 7 Overall liability

- (1) A further liability for damages than envisaged in § 6 is – irrespective of the legal nature of the asserted claim – excluded. This applies in particular to claims for damages from a culpa in contrahendo, owing to other breaches of obligations or owing to claims in tort for compensation of property damages according to § 823 BGB.
- (2) The limitation according to Subclauses (1) shall also apply insofar as the customer instead of a claim for compensation of the damages requests the reimbursement of useless expenses instead of the contractual performance.
- (3) Insofar as the liability for damages towards us is excluded or restricted this shall also apply with regard to the personal liability for damages of our employees, workers, performing or vicarious agents.

§ 8 Exclusion of warranty

- (1) The claims of the customer listed under §§ 6, 7 are excluded in the following cases:
 - a) False use or use in breach of the intended use of the product by the customer (e.g. false anchoring, false air pressure or inadmissible pulling behind/towing of the product)
 - b) Use of the products on land and in insufficient water depths
 - c) Collisions, surf damages, theft, wind, vandalism etc.
 - d) Change or forgery of the product design
 - e) Damages by environmental effects (acid rain, saltwater, storm, high sea waves, snow, ice, thunder storms or chemical or biological effects, e.g. rust)
 - f) Damages to the product by insufficient maintenance
 - g) Normal wear and tear, fading of colours, blunting of the material, deformation or aging of metal or other structures within the framework of the customary use in particular of the trampoline parts.
- (2) The photos of our products contained in our advertising means can not show the actual colour and material structure of our products 100 % for technical reasons. No liability is assumed for insignificant deviation in colour or material between the advertising photo and actual product.
- (3) Exchange products given free of charge as a form of "good will" to replace another product are excluded from a renewed guarantee.

§ 9 Securing of the reservation of title

- (1) We reserve the ownership to the object of purchase until the receipt of all payments from the supply contract. In case of conduct in breach of the contract by the customer, in particular with default of payment we are entitled to take the object of purchase back. The taking back of the object of purchase by us does not represent a withdrawal from the contract. We are authorized to a commercial use of the object of purchase after we have taken it back, the commercial use proceeds are to be offset against the liabilities of the customer minus reasonable commercial use costs.
- (2) As long as the ownership rights are reserved the customer undertakes to treat the object of purchase carefully; he is in particular obliged to insure this sufficiently at the value as new and at his own costs against fire, water and theft damages. Insofar as service and inspection work is necessary the customer must carry this out at his own costs in time.
- (3) As long as the ownership rights are reserved and in case of attachments or other interventions of third parties the customer has to inform us immediately in writing so that we can file an action according to § 771 ZPO [Code of Civil Procedure]. Insofar as the third party is not in the position to reimburse us the in court and out-of-court costs of an action according to § 771 ZPO the customer is liable for the loss incurred to us.
- (4) The customer is entitled to resell the object of purchase in the ordinary course of business when the ownership rights are reserved; however he hereby now already assigns us all claims in the amount of the final invoice amount (including VAT) of our claim, to which he is entitled from the resale against his buyers or third parties irrespective of whether the object of purchase has been resold without or after processing. The customer also remains authorized to collect this claim after the assignment. Our authorization to collect the claim ourselves remains unaffected hereby. We undertake however not to collect the claim as long as the customer satisfies his payment obligations from the collected proceeds, getting not in default of payment and in particular no application is filed for the opening of composition or insolvency proceedings or payments have been stopped. If this is however the case we can request that the customer announces the assigned claims and their debtors to us, provides all information which is necessary for the collection, hands over the relevant documents and informs the debtors (third parties) of the assignment.
- (5) The processing or conversion of the object of purchase by the customer during the ownership rights reservation is always carried out for us. If the object of purchase is processed with other objects which do not belong to us we shall acquire the co-ownership to the new object in the ratio of the value of the object of purchase (final invoice amount including VAT) to the other processed objects at the time processing. Incidentally the same shall apply to the object produced by processing as to the object of purchase delivered under reservation of title.
- (6) If the object of purchase is inseparably mixed with other objects which do not belong to us we shall acquire the co-ownership to the new object in the ratio of the value of the object of purchase (final invoice amount including VAT) to the other mixed objects at the time of the mixing. If the mixing is carried out in the manner that the object of the customer is to be seen as the main object then it is deemed as agreed that the customer assigns us pro rata co-ownership. The customer shall store the thus produced sole-ownership or co-ownership on our behalf.
- (7) The customer shall also assign us the claims for securing our claims against him which are accrued against a third party by connecting the object of purchase with a property ownership.
- (8) We undertake to release the collateral to which we are entitled at the customer's request to the extent that the realisable value of our collateral exceeds the claims which are to be secured by more than 10%; we are responsible for selecting the collateral items which are to be released.

§ 10 Place of jurisdiction - place of performance

- (1) Insofar as the customer is a merchant our registered seat is the place of jurisdiction (Bocholt/Germany); we are however entitled to also file action against the customer at the court of jurisdiction of his place of residence.
- (2) The law of the Federal Republic of Germany shall apply; the validity of the UN Convention on the International Sale of Goods is excluded.
- (3) Insofar as not otherwise derived from the order confirmation our registered seat in the place of performance.

§ 11 Severability clause

Should one provision of this contract be or become null and void, invalid or unenforceable in full or in part this shall have no effect on the validity and ability to assert all other remaining provisions. The null and void, invalid or unenforceable provision is to be seen as replaced by that valid and enforceable provision which shall as far as possible correspond with the sense and purpose pursued with the null and void, invalid or unenforceable provision according

to the object, measurement, time, place and scope. The same shall apply to the filling of possible loopholes in this contract.

§ 12 Guaranty of Wibit Sports GmbH

Insofar as Wibit Sports GmbH has given the customer a guaranty (manufacturer's guaranty) according to the applicable Guaranty Policy the rights and obligations of the manufacturer's guaranty are valid in addition to the general business terms. These general business terms remain unaffected.

§ 13 Language Versions

The general business terms are available in German and English language. In the case of interpretation of the single clauses the German version is binding in case of doubt.