

# GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

## 1. Scope / commitments / future business

These General Terms and Conditions of Sale and Delivery apply only to business operators, legal entities under public law, or special funds under public law; they do not apply to consumers as defined in Section 13 of the German Civil Code (BGB). Notwithstanding different written agreements made in individual cases, they are an integral part of all deliveries and sales transactions conducted by WINTERSTEIGER Säger GmbH (hereinafter WINTERSTEIGER) – Alfred-Ley-Straße 7, D-99310 Arnstadt – in particular those relating to saws and their accessories, including repairs. Employees, sales representatives, and commercial agents are not authorized to give commitments of any kind. These General Terms and Conditions of Sale and Delivery also apply, unless different terms are agreed in writing, to future business of the aforementioned kind without their validity requiring agreement in each individual case. Other contractual conditions, notably those set out in the terms of business or contractual forms of the buyer, orderer, or customer (hereinafter Customer), do not form part of the contract, even if they are not expressly excluded by WINTERSTEIGER.

## 2. Quotations / refusal / alterations

All quotations are made without obligation. WINTERSTEIGER reserves the right, within a period of four weeks, to refuse acceptance of a contract received on the basis of a quotation. Information and statements concerning product specifications of any kind, in price lists, leaflets, brochures, product descriptions and other printed or published materials, give only an approximate description and represent in every case non-binding information concerning average values. Construction, form, equipment, and color are all subject to alteration in so far as the specified use of the purchased item is not thereby excluded.

## 3. Ordering / confirmation of contract / variation

The Customer's contract/order, together with the documentation and information provided by the Customer, form the basis on which the goods or services are to be provided by WINTERSTEIGER. It is not the responsibility of WINTERSTEIGER to verify the documents and information provided by the Customer with regard to general ambiguities or incompleteness, nor to verify whether they are suitable for the intended purpose. The Customer is bound by its order for a period of four weeks. A contract does not come into force until the order is confirmed in writing or a delivery has been made. Silence does not imply acceptance of a contract. The Customer is obliged to verify the confirmation of contract immediately. If the confirmation of contract differs from the order, it is to be regarded as approved by the Customer unless the Customer gives notice in writing to the contrary within a period of 3 days.

## 4. Delivery / delivery dates

Delivery dates and deadlines are never binding, even if this is not expressly stated. WINTERSTEIGER will nevertheless endeavor to meet delivery dates. It is a condition of adherence to delivery dates and deadlines that the Customer fulfills all the contractual commitments of the continuing business relationship. Delays by the Customer in providing data, information, or documents necessary for the fulfillment of the contract will entail a corresponding delay to delivery dates and deadlines. Production and delivery obstacles which are not the responsibility of WINTERSTEIGER, such as force majeure, strikes, shutdowns, supply delivery problems, transport problems, and measures taken by official authorities, entail an appropriate extension to delivery dates and deadlines. In the case of a delay in delivery for which WINTERSTEIGER is responsible, the Customer may, with regard only to the goods affected by this delay and excluding any further claims, either demand performance or withdraw from the contract having set expressly and in writing a period of additional respite of at least 4 weeks. In the case of contracts for successive deliveries the right of withdrawal exists only with regard to each individual delivery. In the case of customized designs the period of additional respite will be determined, case-by-case, based on the level of customization of the designs. WINTERSTEIGER also has the right to make partial deliveries.

WINTERSTEIGER reserves the right to determine the mode of transport, which does not include unloading in any case. Dispatch of any kind will be "EXW according to Incoterms 2000" from the relevant WINTERSTEIGER factory (e.g. EXW Arnstadt) and in each case the cost and risk are to be borne by the Customer; in the case of dispatch from the WINTERSTEIGER factory the risk is even transferred to the Customer if delivery was agreed as "free domicile" or "carriage paid". WINTERSTEIGER will, at the Customer's request and expense, take out an insurance policy to cover all types of damage during transport. If insolvency proceedings are commenced against the Customer regarding its assets, or if settlement proceedings are commenced, or if a deterioration in the financial circumstances of the Customer arises, or if there should be doubtful credit information concerning the Customer, or if the Customer delays payment to WINTERSTEIGER, WINTERSTEIGER is entitled to demand immediate payment of all amounts including those not yet due for payment. If the Customer delays payment, WINTERSTEIGER is entitled to demand payment, within an appropriate deadline, of any outstanding amounts or an appropriate security deposit; in the event that no payment is made within the specified deadline, the Customer is entitled to withdraw from the contract.

In all cases, WINTERSTEIGER is also entitled to make any further deliveries contractually confirmed by WINTERSTEIGER conditional upon payment in advance or indemnification, even if this has not been agreed. Goods ordered "on request" or "on collection" or on a similar basis will be stored from the agreed time of request or collection on the premises of WINTERSTEIGER or, at WINTERSTEIGER'S wish, with a third party, at the Customer's expense and risk. If the Customer delays acceptance of goods, WINTERSTEIGER is entitled, on provision of reasonable prior notice, to dispose of the goods by private contract, notably by selling them to third parties.

## 5. Reservation of rights and ownership

All rights to documents such as drawings, plans, and samples are reserved. These documents may not be processed nor reproduced nor made available or forwarded to third parties without permission and are to be returned on request.

WINTERSTEIGER retains ownership rights to the goods until all accounts receivable under the contractual relationship with the Customer have been paid in full. In the case of delay in payment, WINTERSTEIGER is entitled to demand the return of the reserved goods; the retrieval of the reserved goods does not represent a withdrawal from the contract. WINTERSTEIGER will dispose of the reserved goods by private contract and credit the Customer with the proceeds, having deducted all expenses associated with the retrieval and further disposal of the goods. Seizure of the reserved goods instigated by WINTERSTEIGER does not imply a renunciation of ownership. The Customer may not, without WINTERSTEIGER'S consent, pledge the goods or assign them as security. In the case of seizure of the reserved goods by a third party including attachment, confiscation, or similar actions, the Customer undertakes to indicate WINTERSTEIGER'S right of ownership and to notify WINTERSTEIGER immediately in writing. The Customer will completely indemnify WINTERSTEIGER for all expenses incurred in the prevention of any seizure of the reserved goods. The Customer is entitled to sell on the goods as part of its usual business activities. In this case, it will immediately transfer to WINTERSTEIGER all receivables owed by its customers, up to the amount of the outstanding accounts receivable owed to WINTERSTEIGER, which have accrued as a result of the onward sale to its customers or third parties; this provision applies regardless of whether the goods are processed or not prior to being sold on.

The Customer may continue to collect any accounts receivable even after the transfer. This does not affect WINTERSTEIGER'S right to collect the accounts receivable itself; however WINTERSTEIGER undertakes not to collect the accounts receivable while the Customer is able to meet its payment obligations. Failing this, WINTERSTEIGER may demand that the Customer disclose the details of the transferred receivables and the liable parties; provide all necessary information for the collection of the accounts receivable (purchasers, purchase prices, delivery dates, location of goods, etc.) and the associated documentation; and inform the liable parties of the transfer. If the Customer is in breach of the terms of the contract, in particular in the case of delayed payment or as soon as circumstances arise that pose a justified risk to WINTERSTEIGER'S claims as set out in Section 4 of these General Terms and Conditions of Sale and Delivery, WINTERSTEIGER is entitled to retrieve the goods, on provision of a warning, and the Customer is obliged to release them. Provided the provisions of the German Civil Code (BGB) on consumer credit do not apply, the retrieval or seizure of goods by WINTERSTEIGER will only result in withdrawal from the contract in the case that WINTERSTEIGER expressly stipulates this in writing. The Customer will bear all costs associated with retrieving and disposing of the goods.

## 6. Prices / payment

Prices apply as ex WINTERSTEIGER warehouse in Arnstadt or ex works excluding carriage, packaging, and insurance, and are exclusive of the current rate of VAT. Contracts for which no definite prices have been expressly agreed will be charged according to the list price valid on the date of delivery. Invoices are payable without discount 30 days after date of invoice. WINTERSTEIGER reserves the right – even having confirmed a contract – to increase the prices to WINTERSTEIGER'S list price as on the delivery date, in the case of increases in the costs of significant materials, raw materials, or carriers; increases in labor costs due to mandatory statutory provisions or collective contractual conditions; changes in exchange rates or conditions; increases in charges; or increases in transport and delivery costs.

Costs incurred as a result of subsequent amendments or adaptations to the order will be borne by the Customer in full; checks or bills of exchange will only be accepted for payment and only by express agreement, with no obligation for presentation or protest. Acceptance will be at the value applicable on the day on which WINTERSTEIGER can have disposal of the equivalent value. Discount charges and all costs associated with the discharge of the check or bill of exchange will be borne by the Customer. Incoming payments will be credited first to costs and expenses, then interest, and finally principal receivables; WINTERSTEIGER is entitled to credit incoming payments against the longest-standing unpaid items. In the case of delayed payment, the Customer will be charged a late-payment interest rate of 8% above the base rate of the European Central Bank. The right to assert a claim for additional damages resulting from the delay is expressly reserved. However the Customer has the right to prove that the damages caused by the delay are lower than this amount. All guaranteed discounts, deductions, or other concessions will be regarded as not granted in the case of a delayed payment or if insolvency proceedings are commenced against the Customer.

## 7. Cancellation

The Customer is not entitled to cancel the contract either as a whole or in part. If WINTERSTEIGER should accept a cancellation in an individual case, the Customer is obliged to pay a lump sum of 15% of the contractual amount to WINTERSTEIGER. The right to assert a claim for a higher amount of damages is reserved. However the Customer has the right to prove that the damages incurred by WINTERSTEIGER are lower than this amount.

## 8. Bank guarantee / letter of credit

For all prices and payments WINTERSTEIGER reserves the right to demand an abstract, divisible bank guarantee from a first class major German bank or the opening of an irrevocable, divisible, and transferable documentary credit confirmed by a first class major German bank.

## 9. Warranty

Without express written agreement WINTERSTEIGER does not provide a guarantee for a specified utility or usability of the goods. Visible defects or discrepancies in the quantity or dimensions of the goods must be reported, in writing, to WINTERSTEIGER without delay and within 14 days of delivery at the latest. If the Customer fails to report defects or discrepancies, the goods will be deemed to be accepted. Less obvious defects must be reported to WINTERSTEIGER by the Customer, in writing, as soon as possible after their discovery. In the case of justified and timely quality complaints, the only recourse to the Customer in the first instance is to request that the defects be rectified. In this case, WINTERSTEIGER may choose whether to repair the defect or deliver a replacement defect-free item. The Customer may only withdraw from the contract or reduce the amount owed in the event that it is not possible to rectify the defect or efforts to rectify the defect have been unsuccessful.

This is deemed to be the case following two failed attempts to rectify the defect. All claims under a warranty are invalid if the goods have been used incorrectly, modified, repaired, or in any other way interfered with by the Customer or a third party. The same applies to any modifications to the delivered goods made without WINTERSTEIGER'S consent. All claims relating to defects will lapse one year after the associated risk is removed. This does not apply to delivered goods that have caused damage to a construction despite being used correctly for their usual purpose. In this case, the statutory limitation period for claims for defects applies. This also applies in the case that WINTERSTEIGER is guilty of wilful misconduct or acting in bad faith.

## 10. Disclaimer

Claims for compensation of any kind made by the Customer will not be accepted unless they concern a deliberate act or an act of gross misconduct on the part of WINTERSTEIGER. This limitation of liability does not apply to WINTERSTEIGER, its legal representatives, or vicarious agents in the case of claims resulting from loss of life, physical injury, or poor health, for which they are proven responsible. Moreover it does not apply to claims relating to product liability or any proven infringement of significant contractual obligations. In the case of the latter, WINTERSTEIGER'S liability for ordinary negligence is limited to the typical contractual damages that could have been reasonably foreseen.

WINTERSTEIGER'S liability is further limited in all cases to a net amount of EUR 50,000.00. – or to the value of the order and/or the goods, whichever is higher. The above exclusions and limitations as to liability apply also to damages caused by persons for whom WINTERSTEIGER is responsible.

In the case of fabrications produced by WINTERSTEIGER on the basis of drawings, plans, or other information provided by the Customer, the Customer will indemnify WINTERSTEIGER in all respects, including interest payments and costs, against any infringements of third parties' rights especially of industrial property rights.

## 11. Offset / joint liability / retention / refusal to perform

The Customer is not permitted to offset any accounts receivable owed to WINTERSTEIGER based on counter claims, unless the amounts available for offsetting have been legally established or recognized. Multiple Customers are jointly liable for the accounts receivable. The Customer is jointly liable for all accounts receivable owed to WINTERSTEIGER, even if at its request the invoice is made out directly to a third customer or delivery is effected and/or services are rendered to a third party.

The Customer has no rights of retention or to withhold performance in so far as there are no mandatory legal regulations to the contrary. For as long as the Customer does not fulfill all its obligations or commitments to WINTERSTEIGER, the latter is entitled to retain all services and deliveries.

## 12. Stipulation requiring written form

Commitments by WINTERSTEIGER or alterations to the contract must in every case be confirmed in writing by WINTERSTEIGER for them to be legally valid. Communication by fax is sufficient to comply with this written form requirement.

## 13. Deliveries

WINTERSTEIGER will make deliveries to the Customer at the address most recently supplied by the Customer. The Customer is obliged to notify WINTERSTEIGER of changes of address as otherwise deliveries made to the last address supplied will be regarded as having been accomplished.

## 14. Severability clause

Nullity or invalidity of individual provisions in the General Terms and Conditions of Sale and Delivery and the contract do not affect the legal validity of the remaining conditions; in this case, those agreements which are legally valid and most closely approximate to the original intention of the invalid clauses will apply.

## 15. Place of performance / legal venue / applicable law

It is agreed that for all claims arising from the business relationship with WINTERSTEIGER, Arnstadt is to be the place of performance and the appropriate court for Arnstadt is to be solely competent. WINTERSTEIGER nevertheless reserves the right to take proceedings against the Customer at the location of its head office. It is agreed that relevant German law will apply to the contract and all claims arising from it or associated with it. The applicability of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.