

# Drahtwerk Oberndorfer Hütte Peter Weil GmbH & Co. KG - General Terms of Delivery

## 1. General

Provided nothing else has been expressly agreed, our "General Terms of Delivery" (in the following termed GTD) detailed in the following apply for all quotations, contracts, deliveries and other services in business transactions with non-consumers in the intentions of § 13 BGB (German Civil Code). Deviating conditions, in particular buyer's purchase conditions, are hereby opposed; these will only become a part of the contract when we expressly accept these. Within the scope of a current business connection between businessmen/entrepreneurs and us, our GTD will also become a part of the contract even if we have not expressly indicated their inclusion in the individual case.

## 2. Quotation and Signing of Contract

Our quotations are always subject to change without notice.

We retain the ownership and copyright for all quotation documentation, it may not be made accessible to third parties.

The contents presented in our catalogues, brochures, sales and other documentation, as well as in the Internet - where not expressly designated as binding - are always subject to change without notice; they may not be copied or made accessible to third parties without our approval.

A purchase contract will come into existence by verbal, faxed or written order and our written acceptance of order, by way of a contractual document signed jointly by both parties or by immediate execution after receipt of order. In the latter case the delivery docket, resp. the invoice will be deemed as acceptance of order.

The right to conduct technical changes on the goods, when this does not impair the technical function, remains unaffected.

Requests by the buyer for a subsequent reduction or cancellation of the valid contract can only be taken into consideration on the basis of special agreements. In any case we shall be entitled to charge a suitable percentage of the net invoice amount for processing costs, checking and new packing when goods are returned correctly with our agreement. Damaged goods will not be credited.

For a purchase contract which comprises several documents, the following priority shall apply in the case of contradiction of the individual documents:

1. our acceptance of the order with all supplements and changes
2. drawings in the sequence of detail drawing, general drawings, data/standard sheets
3. Specifications and finally this GTD.

Tools, models, templates, moulds etc. remain our property even if the buyer has accepted the costs in total or in part; as long as these items can be used for subsequent orders, they will not be charged again.

If, after signing of the contract, we become aware of facts - in particular a payment delay with regard to earlier deliveries - which allow the conclusion in accordance with the due discretion of a businessman that the purchase price claim will be endangered by a lack of solvency on the part of the buyer, we, after having set an appropriate period of grace, shall be entitled to make any still outstanding deliveries only against payment in advance, or to demand corresponding securities and to withdraw from the contract in the case of refusal. Invoices for already performed partial deliveries will be made out as due immediately. We are entitled to demand return of the goods, this demand for the return of the goods does not constitute a withdrawal from the contract. We are however entitled, after an appropriate period, to withdraw from the contract or, with refusal to deliver, to demand compensation for damages due to non-performance. We shall continue performance immediately when the buyer provides adequate guarantee for the fulfilment of this duties and obligations.

The minimum order value for small orders is 80 Euro.

## 3. Prices

Our prices for deliveries and services are always - exclusive of value added tax for domestic deliveries and services in the amount valid at the time of performance - ex works, excluding transport, insurance, assembly and other charges, as well as packaging, provided nothing else has been expressly agreed.

Any packaging necessary in our opinion will be charged at prime costs. Upon request we will dispose of the packaging without reimbursement of costs and freight-free return delivery.

All taxes, charges and other fees incurred outside of the Federal Republic of Germany will be at the expense of the buyer.

Charges or the increase of already existing charges, which are introduced as a result of government measures and which concern the manufacture or delivery of the goods and increase their costs, can be added to the agreed purchase price in the full amount.

If a significant change to major cost factors, such as in particular the costs for wages, pre-material or freight, occurs during a delivery period of more than four months between the signing of the contract and the delivery date, the agreed price may be adjusted in an appropriate scope and corresponding with the influence of the major cost factors. We will supply the documents required to check the appropriateness.

If, in the case of foreign-country transactions, the goods remain inland or if there is no evidence provided about the export, we are entitled to a subsequent charge of the value added tax in the currently valid amount and other costs.

## 4. Delivery

The delivery times and schedules specified by us are to be regarded as approximate only, if a binding and express assurance has not been made. Moreover, they apply only under the prerequisite of an on-time clarification of all details of the contract and on-time fulfilment of all of buyer's obligations.

The delivery period is deemed to have been met when the goods have been completed, resp. have been reported as finished. Part deliveries are permissible in a reasonable scope; we will inform the buyer about this immediately.

This also applies, when these circumstance occur with our suppliers and their sub-suppliers. We will inform the buyer as soon as possible about the start and end of such hindrances.

We are liable for on-time delivery only in as far as it is our own fault and that of our vicarious agents, not however for the fault of our pre-suppliers as these are not our vicarious agents. We are however obliged, upon demand, to assign to the buyer any claims we are entitled to against the pre-supplier. In the case of an impossible or unreasonable delivery, we are entitled to withdraw from the contract. A liability for damages exists only under the prerequisites stated in clause 10, General limitations of liability.

In the case of an extension of the delivery period of more than four months the buyer will be entitled to withdraw from the contract for the non-performed part of the contract, when it is unreasonable that he continues with the contract. The buyer must set us an appropriate period of grace in writing, with the indication that he will refuse acceptance of the goods after the fruitless expiry of the period of grace. The right to withdraw however only covers the non-fulfilled portion of the contract, when the performed part service is of use to the buyer. A liability for damages exists only under the prerequisites stated in clause 10, General limitations of liability.

If the delivery is delayed for a reason which is the responsibility of the buyer, we shall be entitled to store the goods at the costs and risk of the buyer at our discretion and to undertake all measure for the maintenance of the goods at our discretion.

## 5. Dispatch, Transfer of Risk

Dispatch route and form of dispatch are subject to our choice, if the buyer has not issued corresponding instructions. The risk will pass over to the buyer as soon as the goods have left our works, even if freight-free delivery has been agreed. If provisions of Incoterms have become a part of the contract, these shall apply with priority.

Insignificant faults do not entitle the buyer to refuse acceptance of the goods.

## 6. Acceptance, Inspection

If the contract prescribes an acceptance prior to the dispatch of the goods, we will inform about the date on time.

If the buyer culpably misses the acceptance date, the goods will be deemed accepted.

Insignificant faults do not entitle the buyer to refuse acceptance of the goods.

All material and personal costs of the vendor will be borne by the vendor, all material and personal cost of the buyer or his agents will be borne by the buyer.

The buyer and vendor will agree on separate agreements at the time of signing the contract for acceptances at the site of use. A report is to be prepared on the last day of the acceptance, which must be signed by the parties.

These provisions also apply for the case of inspections.

## 7. Payments

Payments are due, if nothing other has been expressly agreed, within 30 days from the invoice date, net, to one of our bank accounts.

Where we have notified the readiness for dispatch of the goods, and this is not prior to the contractually agreed dates, we are entitled to present our accounts.

Invoices for assembly work are to be paid immediately, net; we do not accept any deduction tax in accordance with § 48 EStG (Income tax act), where required we will provide our buyer with an exemption certificate.

The buyer waives raising of a lien on goods, both from current contract and earlier or other business, even if he rejects the delivery item. The retention of payments because of, or the set-off with counter-claims by the buyer are only permissible when these counter-claims are undisputed.

We accept discountable bills of exchange as payment only after corresponding agreement. Credits for bills of exchange and cheques will be made with proviso of receipt, less charges with value of the day on which we can dispose of the value.

Claims will be due immediately, independent of the running period of any accepted and credited bills of exchange, when the payment conditions are not adhered to or facts become known, which allow the conclusion that our purchase price claims will be endangered by a lack of solvency on the part of the buyer.

The legal regulations will apply with payment delay. Any agreed discounts will not be granted when the buyer is in default of payment of earlier deliveries. If the buyer is in default of payment, or he does not redeem a bill of exchange upon maturity, we are, after prior dunning, entitled to take the goods back, where necessary enter the buyer's premises and remove the goods. The retrieval does not constitute a withdrawal from the contract. We are however entitled to withdraw from the contract after and appropriate period of grace or, with refusal of delivery, to demand compensation due to non-performance. If the goods however, were delivered within the scope of an individual contract without current business relations, we agree to withdraw from the contract first; we can however in any case prohibit the removal of the delivered goods. In these cases we shall be entitled to make further deliveries dependent on advance payments, or the provision of corresponding securities. The buyer can however avert these as well as other stated legal effects, by security provisions in the amount of the endangered payment claims.

A payment refusal or retention is excluded when the buyer was aware of a fault or any other reason for objection upon signing of the contract. This also applies when the fault remained unknown to him due to gross negligence, except when we maliciously kept silent about the fault or other reason for objection, or have accepted a guarantee for the properties of the item. Moreover, the payment may only be retained in an appropriate scope in the case of faults or other reasons for objection. In the case of a dispute, an expert nominated by the Chamber of Industry and Commerce located at the buyer's headquarters will decide about the amount. This expert shall also decide about the distribution of the costs of his involvement at his own discretion.

In the case of default of payment, we shall be entitled to bill interest in the amount of 8% above the base interest rate published by the Deutsche Bundesbank (Federal Reserve Bank); higher default interest may also be claimed against corresponding proof.



## 8. Retention of title

We retain the right of ownership of the deliveries and services until the full payment of the purchase price. With goods, which the buyer orders within the scope of current business relations, we retain ownership until all of our claims against the buyer from the business relations – including from contracts signed simultaneously or at a later date, including the future claims – have been settled.

This also applies when our individual, or all, claims have been taken up into one invoice and the balance has been struck and accepted; the retained title applies as security for the balance claim.

If a bill of exchange is accepted as payment of the purchase price by the buyer, the retention of title will not expire prior to the redemption of the bill of exchange by the buyer as the payer.

Our property is to be marked as such and stored separately from the buyer's material and it is to be adequately insured against loss and damages. Upon request, he must provide proof of this by presenting the insurance policy. For the case of damage the buyer hereby transfers to us the claim against the insurance company in the amount of the invoice value of the goods delivered by us.

As long as a claim secured by retention of title exists we are entitled to demand information from the buyer at any time as to which goods delivered under retention of title are still in his possession, where these are located and to inspect these. If we claim hand-over, the buyer here and now will allow us to take over the goods without resorting to the courts; where necessary, this includes the right to access the factory and other localities of the buyer.

If the goods under reservation are manufactured into a new, moveable item, the processing will be done in our name, without this obliging us; the new item will become our property. When processing, in combination with goods, which are not our property, we will acquire co-ownership of the new item in the ratio of the value of the retention goods to the other goods at the time of the processing and the processing value.

The buyer may sell our property only within the customary business transactions, he is entitled to further processing and other use of the goods under reservation only when the claims from the further use of the goods under reservation are transferred to us with all subsidiary rights. The buyer is not entitled to other dispositions of the goods under reservation, in particular not to pawn these or assign security.

If the goods under reservation are combined, mixed or united with goods which do not belong to us in accordance with §§ 947, 948 BGB (German Civil Code), we will become co-owner corresponding with the legal regulations. If the buyer acquires sole ownership through combination, mixing or uniting, he will here and now transfer co-ownership to us in the ratio of the value of the goods under reservation to the other goods at the time of the combination, mixing or uniting. In these cases, the buyer must store the items which are in our ownership or co-ownership and which also apply as goods under reservation in the intentions of the afore stated provisions, free of charge.

If goods under reservation are sold on their own or together with goods which are not our property, the buyer will here and now, i.e. at the time of signing the contract, transfer to us the claims arising from the sale in the amount of the value of the goods under reservation with a security surcharge of 20% with all subsidiary rights and ranking ahead of the rest; we accept the assignment. The value of the goods under reservation is the amount of our invoice. If we are co-owners of the sold goods under reservation, the assignment of the claim also covers the amount which corresponds with our pro rata value in the co-ownership.

With the proviso of recall, the buyer is authorised to call in the claim transferred to us. We will not make use of our own right to call in as long as the buyer meets his payment obligations. Upon request he must however nominate the debtors of the transferred claims to us, and to indicate to these the transfer; in parallel, we are also empowered to then indicate the transfer to the debtors ourselves. The buyer will be allowed to assign by means of real factoring only with the prerequisite, that this is notified to us with nomination of the factoring bank and the buyer's accounts held there and that the factoring profit exceeds the value of our secured claims. Our claim will be due immediately upon the credit of the factoring profit.

The buyer must immediately inform us of any third-party foreclosure measures or other infringements of the goods under reservation, rights or the transferred claims, and hand over the relevant documentation; the costs of interventions will be at the expense of the buyer.

With the discontinuance of payments and/or the filing of insolvency proceedings the right to sell, to use or install the goods under reservation or the authority to call in the assigned claims will expire; the authority to call in will also expire with a cheque or bill of exchange protest. This does not apply to the rights of the insolvency administrator.

If the value of the granted securities exceeds the claims (where applicable, reduced by down payments or part payments) by more than 20%, we are obliged to conduct a re-transfer or release at our choice. With the payment of all our claims from the business relations, the title in the goods under reservation and the transferred claims pass over to the buyer.

Where the validity of the retention of title is tied to special prerequisites outside of the Federal Republic of Germany, or there is no such immediately effective right for us, the buyer must ensure that we are guaranteed such a retention, or alternative security. The buyer must provide all cooperation activities which are necessary to secure the retention of title. For the remainder, German law must be taken into consideration as supplement and as far as is possible.

## 9. Warranty

The warranty obligations start with the acceptance, the notification of readiness for dispatch resp. if such a notification is not made, with the day of dispatch.

A fault in the intentions of § 434 BGB can only be one according to own discretion not insignificant deviation of the delivery, resp. the service with regard to its condition or usability for the contractually agreed purpose, provided contractual agreements were made for these points, and we guarantee for these faults only in accordance with the following provision.

Warranty will not be accepted for damages which are caused by the following or comparable reasons: unsuitable resp. incorrect use or handling, overloading, faulty assembly and/or faulty connection resp. set-to-work by the buyer or third parties, changes, supplements or repair work conducted without our prior approval, non-compliance with operating or maintenance instructions, exchanging of parts or use of non-specified consumables, wear-and-tear, corrosion, mechanical damages, faulty or careless treatment, unsuitable operating means and exchange materials, faulty construction work, unsuitable building ground, chemical, electro-chemical or electrical influences, as far as these are not our responsibility. Warranty will also not be accepted for process technology, except when other agreements have been made in the purchase contract.

The buyer must inspect the goods immediately for quantity and condition. Obvious defects must be indicated to us in writing within eight days after receipt of the goods, resp. service, hidden defects at the latest eight days after their discovery. § 377 HGB (Uniform Commercial Code) remains unaffected. Transport damages must be notified to the carrier immediately and marked on the delivery document.

If the buyer detects faulty goods, he may not make use of these, i.e. they may not be divided, sold or further processed without our approval until an agreement has been reached about the processing of the claim resp. an assessment has been made by an expert nominated by the Chamber of Industry and Commerce at the buyer's headquarters who is authorised by the courts. A liability for damages exists only under the cases stated in clause 10, General limitations of liability.

The buyer is obliged to make the goods objected to available to us upon demand so that we can check the complaint. The warranty will not apply in the case of culpable refusal.

With justified claims, we are empowered, under consideration of the type of the fault and the entitled interests of the buyer, to determine the kind of subsequent fulfilment (up to three replacement deliveries or rectification work) or to reimburse the purchase price instead of a replacement delivery.

The buyer must grant us an appropriate time and opportunity to conduct the repair and improvement work deemed necessary at our discretion, otherwise we shall be released from the warranty. The direct costs incurred through the repair/rework or replacement delivery, including the dispatch to the original delivery address will be at our expense, the other costs will be at the expense of the buyer. The latter applies in particular to the costs which are incurred because the item of delivery was moved to another location.

Only in urgent cases such as endangerment of the operating safety, to ward off unreasonably serious damages – where we must be informed immediately – or if we have come into default with the rectification of the fault, will the buyer have the right to rectify the fault himself or have it rectified by third parties and to demand reimbursement of the necessary costs; for the remainder, costs will only be reimbursed after communication and authorisation. The buyer must undertake all measures, which contribute to minimising the damage.

In the case of a fault accepted by us, the buyer shall be entitled to retain a share of up to 10% of the purchase price as security until the fault has been rectified. Rejections of fault claims, against which the buyer does not object to within a month after rejection, shall be deemed as accepted.

In the case of withdrawal by the buyer or vendor, the buyer will be liable for deterioration or loss until return to the vendor, as far as legally provided.

The warranty period is 12 months with daily eight-hour operation and five working days per week. This does not apply where the law in accordance with § 438 I no. 2 (building works and items for building works) and § 634a I, no. 2 (building faults) BGB prescribe longer periods.

The period of limitation for the rectification work or the new delivered item is six months from termination of the rectification work or delivery of the newly delivered item. The period of limitation will end at the earliest however with the expiry of the period of limitation of the originally delivered item.

## 10. General limitation of liability

Indemnity and expenditure claims of the buyer (in the following termed indemnity claims) on the grounds of violation of contractual or extra-contractual obligations, which exceed those agreed with these provisions, are limited to the contractual, foreseeable damage. This applies in particular to indemnity claims for damage, which has not been caused to the goods themselves (consequential damages, in particular lost profit).

This does not apply where mandatory liability applies e.g. in accordance with the product liability act, in cases of premeditation or gross negligence due to injury to life, body or health.

With lack of assured properties, we shall also be liable for indemnity with minor negligence, when the assurance had the purpose of securing the buyer against the occurred damages.

For grossly negligent behaviour, the liability will be limited to the replacement of the damages foreseeable at the time of the signing of the contract.

We have signed an appropriate worldwide valid product resp. employer's liability insurance for personal and property damages. Claims for replacement of property damages from product and employer's liability are therefore limited to the amounts owed by the insurance. Where permissible, we will assign these claims to the buyer. The employer's liability insurance is based on the General Liability Conditions.

Indemnity claims of the buyer are subject to a period of limitation of twelve months; the legal regulations apply for liability in accordance with the product liability act or for malice, resp. intent.

## 11. Place of jurisdiction, applicable law and final provisions

Place of performance for the delivery is the place of dispatch, for payments (including cheque and bill of exchange suits), as well as all disputes which may arise between the parties, as long as the buyer is a businessman, legal person of public law or separate estate of public law, is the registered office of our company. The place of jurisdiction is Wetzlar. We are however entitled to sue the buyer at his registered offices.

The personal data gained within the scope of the business relations will be used and processed by us exclusively in accordance with the provisions of the Federal Data Protection Act. The relations between the contractual parties will be regulated exclusively in accordance with the laws applying in the Federal Republic of Germany with exclusion of the Uniform UN convention on Contracts for the International Sale of Goods (CISG).

Any form of changes, supplements and verbal subsidiary agreements or any assurance going beyond the written purchase contract conducted by us, the buyer or other third parties will always require written confirmation; this also applies in particular for the cancellation of this written form provision.

Should individual provision of these conditions or the contract be or become invalid, the validity of this GTD and the contract shall not be affected. An invalid provision shall be replaced by the parties by a provision which comes as close as possible to the economic success of the invalid one. In case of any doubts the German version is valid.

General Terms of Delivery of Drahtwerk Oberndorfer Hütte Peter Weil GmbH & Co. KG Stand Januar 2020