

General Terms of Sale and Delivery for Foreign Business of West Interior GmbH with registered office in Langenfeld, Germany (Stand: Juli 2020)

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1. General, Scope of Application

1.1 Sales, deliveries and other services by West Interior GmbH to "customers named in Paragraph 1.2 shall be made exclusively on the basis of these General Terms of Sale and Delivery for Foreign Business (Terms of Delivery), which shall be accepted by the Customer by the placing of an order or the receipt of delivery. These Terms of Delivery shall also apply to all future transactions with the Customer. The Customer's conflicting or supplementary general terms and conditions shall not apply, even if West Interior GmbH does not expressly object to such terms.

1.2 The Terms of Delivery shall only apply to customers domiciled outside of the Federal Republic of Germany which are trading in their professional or business capacity when they sign the contract, or to foreign legal entities under public law, or to a foreign special fund under public law.

1.3 West Interior GmbH's General Terms of Sale and Delivery for Domestic Business shall apply to all customers domiciled within the Federal Republic of Germany.

2. Conclusion, Content of the Contract

2.1 Particulars and information contained in product catalogues and price lists only become a binding part of the contract provided that they are expressly referred to therein.

2.2 A contract shall not become effective until it has been expressly confirmed by West Interior GmbH in a written confirmation of order and shall be governed exclusively by the contents of the confirmation of order and these Terms of Delivery. Oral agreements or promises as well as changes to confirmed orders are only valid if they have been confirmed by West Interior GmbH's authorized representatives in writing.

3. Description of Goods, Offer Documents, Reservation of Right of Modification

3.1 Information provided in sales catalogues, price lists, brochures and any other informative literature provided by West Interior GmbH to the Customer as well as any other descriptions of the goods to be delivered (Goods) shall under no circumstances constitute a guarantee for any specific quality of the Goods; such specific guarantees must explicitly be agreed in writing.

3.2 West Interior GmbH shall retain any ownership rights, copyrights, name rights and industrial property rights to all documents and other items including cost estimates, drawings, models, samples and software handed over to the Customer. These documents and items shall be kept confidential vis-à-vis third parties, even after the termination of the contract. The duty to keep confidential shall only expire if and insofar as the knowledge contained in the documents and items handed over becomes part of the public domain.

3.3 West Interior GmbH retains the right to assert all claims if the Customer discloses documents and other items provided to it by West Interior GmbH to a third party without having been authorized to do so.

3.4 West Interior GmbH retains the right to modify the design and material to the extent the agreed function and optical appearance is not changed hereby and the modifications are acceptable for the Customer. Any further modifications require the Customer's consent.

4. Delivery and Performance Periods and Dates

4.1 Delivery and performance periods and dates are only binding if they have been expressly confirmed by West Interior GmbH in writing.

4.2 Any agreed delivery and performance periods shall commence upon conclusion of the contract, however, not until the Customer has produced all documents, permits and releases to be provided by it and has resolved any product-related questions to be answered by it and has stated any details that the Customer must submit in relation to the requested services, in particular the requested equipment of the Goods.

4.3 Any agreed delivery and performance periods shall commence in case of down payment and prepayment pursuant to Section 7.3 once West Interior GmbH is able to dispose of the amount (receipt of payment).

4.4 Delivery and performance periods are deemed complied with if all circumstances effecting the passing of risk (Section 5 Para. 5) have occurred before they expire. The same shall apply to the compliance with delivery and performance dates. If delivery is delayed due to reasons for which West Interior GmbH is responsible, West Interior GmbH shall only be liable to the extent specified under Section 9.

4.5 In case of unforeseeable, unavoidable events that are beyond West Interior GmbH's control, and for which West Interior GmbH does not bear responsibility, such as events of force majeure or labor disputes, the delivery and performance periods and dates shall be extended or postponed, also during a delay, by the duration of such event. West Interior GmbH shall inform the Customer as soon as possible about the beginning and the end of the disturbance. If the disturbance continues for more than three months or if it has been established that it will continue for more than three months, both contracting parties may rescind the contract. With regard to any Goods that West Interior GmbH does not produce itself, the correct and timely self-supply shall be reserved.

4.6 If the Customer does not accept the delivered Goods in time, West Interior GmbH shall be entitled to charge to the Customer any costs, in particular storage costs, that have incurred because the delivered Goods were not accepted in time. If the Goods are stored at West Interior GmbH's premises, storage costs in the amount of 2% of the market price of the Goods shall be charged per month.

5. Scope of Delivery, Shipment, Passing of Risk, Transport Insurance

5.1 Measurement and weights stated in the offer documents of West Interior GmbH as well as any other technical data of the Goods constitute approximate values to the extent this is due to technical reasons or customary in the respective sector.

5.2 West Interior GmbH may make partial deliveries and/or may render partial services for good reasons provided this is reasonable for the Customer.

5.3 The place of delivery shall be subject to the delivery terms agreed between West Interior GmbH and the Customer, which are to be interpreted according

to the Incoterms, as amended from time to time. Unless specific delivery terms have been agreed upon, delivery shall always be made EXW at West Interior GmbH's registered office according to the Incoterms, as amended from time to time. If the Goods are delivered to the Customer, risk shall pass to the Customer. West Interior GmbH may choose at its own discretion the type and route of shipping.

5.4 Unless otherwise agreed, risk shall pass to the Customer at the time that the Goods are made available to it. If the Goods are transported to the Customer, the risk shall pass to the Customer at the latest at the time when the Goods are handed over to the first carrier for transmission to the Customer. If the carriage of the Goods should be delayed as a result of circumstances beyond West Interior GmbH's control, then risk shall pass to the Customer at the time when West Interior GmbH's readiness for dispatch is communicated to it.

5.5 A transport insurance shall be taken out only upon request and at the expense of the Customer. In case of a claim West Interior GmbH will assign to the Customer claims against the insurance policy, simultaneously with and in exchange for the contractual performance by the Customer (including repayment of the insurance premiums).

6. Prices

Unless agreed otherwise, all prices are ex works (EXW) and are exclusive of packaging, shipping, insurance as well as tax and other duties related to the delivery. Payment must be made in the currency specified in West Interior GmbH's offer or confirmation of offer.

7. Payment Terms, Credit Standing of Customer

7.1 Unless agreed otherwise, invoices by West Interior GmbH shall be due for payment by the Customer without any deductions within 14 days from the date of invoice. Payment shall only be deemed to have been effected once West Interior GmbH is able to dispose of the full amount (receipt of payment).

7.2 West Interior GmbH shall be entitled to issue separate invoices for partial deliveries and/or partial services as defined in Section 5.2.

7.3 West Interior GmbH shall be entitled to request down payment up to 80 per cent of the order value prior to delivery. West Interior GmbH shall be entitled to request prepayment if no credit insurance can be obtained for the Customer.

7.4 Bills of exchange and checks shall only be accepted by West Interior GmbH as means of payment upon specific agreement between the contracting parties. In such cases payment shall only be deemed to have been effected once the amount has been credited to the specified account of West Interior GmbH without reservation. All costs including statutory VAT that have incurred due to payment being effected by bill of exchange or check shall be at the expense of the Customer and shall become due immediately.

7.5 The Customer is only entitled to a set-off and is only entitled to assert a right of retention if its counterclaim is uncontested, acknowledged, or has been finally adjudicated.

7.6 If the Customer is in default of payment, West Interior GmbH shall be entitled, irrespective of any other remedies it may have, to demand default interest in the amount of 7% p.a. above the base rate of the European Central Bank. The assertion of a claim for further damages due to default shall remain unaffected.

7.7 If, after conclusion for the contract, West Interior GmbH learns of circumstances that justify reasonable doubt as regards the Customer's solvency or credit standing and due to which West Interior GmbH's payment claim under the contract may be jeopardized, West Interior GmbH shall be entitled to perform outstanding deliveries and/or render services only if the Customer makes prepayment or furnishes a security and the Customer has paid any other amounts due under the business relationship that are economically related to the contract. Furthermore, West Interior GmbH shall be entitled to rescind the contract in full or in part and to request damages unless the Customer has fulfilled its obligations mentioned in sentence 1 above within a reasonable time period.

7.8 Unless agreed otherwise, any payments by the Customer received by West Interior GmbH shall redeem the Customer's debts in the order of their due date according to Section 7.1.

8. Duty to Inspect the Goods, Defectiveness, Notice of Defect, Customer's Rights in case of Defects

8.1 The Customer must inspect the Goods without undue delay upon delivery and must notify West Interior GmbH of any defects that are obvious upon delivery of the Goods in writing and without undue delay, but not later than one week following delivery, whereby the type of the defect must be specified in detail. The Customer must notify West Interior GmbH in writing of any hidden defects within a period of one week after having detected or having been able to detect the respective defect. Otherwise, the Customer shall lose its warranty claims with regard to these defects, notwithstanding the reasons the Customer may have for not adhering to these requirements. The aforementioned one-week period is deemed complied with if the Customer has sent the written notice of defect in due time, provided that West Interior GmbH has actually received the notice of defect sent in due time.

8.2 Unless agreed otherwise in the contract, a defect does not already exist due to that fact that the Goods do not fulfill technical and other standards applicable in the country of destination or that the Goods are not suitable for purposes for which comparable goods are usually used. Variations of surface, structure and color of individual Goods do not constitute a defect as far as they relate to production technique and are acceptable.

8.3 Complaints of the Customer are in any case excluded if they are attributable to the Customer's violation of West Interior GmbH's recommendations for application.

8.4 If, after the Customer has given a notice of defect, a defect of the Goods cannot be found, the Customer must reimburse to West Interior GmbH all costs having incurred in relation to the inspection of the Goods.

8.5 If the Goods are defective, West Interior GmbH shall be entitled to remedy the defect by subsequent performance or delivery of a replacement.

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8.6 If the defect of the Goods is not remedied by subsequent performance or delivery of a replacement within a reasonable time period, the Customer may request a reduction of the purchase price.

8.7 If the Goods are defective, the Customer shall not be entitled to rescind the contract instead of claiming a reduction of the purchase price according to Section 8.6, unless the defect constitutes a material breach of duty. No material breach of contract shall exist if West Interior GmbH remedies the lack of conformity within a reasonable period to be fixed by the Customer but which shall not be less than six (6) weeks.

8.8 The Customer's rights in case of defects of the Goods shall become statute-barred within twelve months after delivery of the Goods to the Customer.

9. Liability, Damages

9.1 West Interior GmbH shall be liable for damages vis-à-vis the Customer, in particular for consequential economic loss due to delayed delivery and/or performance or defectiveness of the Goods, only in the event of gross negligence or intent.

9.2 Subject to the provision in Section 9.3 and Section 12.2, West Interior GmbH shall be liable according to the statutory and contractually unchangeable product liability provisions, for data breaches and for physical injury.

9.3 If a third party, which has purchased the Goods from the Customer or from another or several intermediate dealers of the chain, asserts claims vis-à-vis West Interior GmbH under the provisions of a foreign law due to an alleged product defect of the Goods, the Customer undertakes to indemnify West Interior GmbH within their interior relationship from any claims of the third party asserted in or out of court, provided that the Goods were in compliance with the technical and other standards with regard to product safety applicable in the Federal Republic of Germany and thus, the Goods were not defective within the relationship with the Customer.

10. Retention of Title

10.1 West Interior GmbH shall retain title to the Goods unless the Customer has paid the purchase price in full as defined in Section 7.1.

10.2 The Customer is obliged to take all measures necessary for compliance with the retention of title according to Section 10.1 or for serving the purpose of a functionally equivalent security right accepted in the country of destination (domicile of the Customer). The breach of this obligation by the Customer constitutes a material breach of contract.

11. Obligations of the Customer in case of installation of the delivery item.

11.1 In case of installation of the delivery item by West Interior GmbH the Customer is responsible for the maintenance of general order on the construction site, for the coordination of the interaction of the different contractors and to fulfill all agreed availability obligation and preliminary work. The Customer guarantees, in that regard, that West Interior GmbH will be able to do the installation without legal or factual obstacles and without delay. That means that West Interior GmbH shall be informed by the Customer at the time of placing the order if the installation is located not at the ground level, that the installation site is accessible, cleaned and free of obstacles or disabilities. Particularly, the Customer has to perform all agreed and necessary preparation work and preliminary work at his own expense and has to guarantee West Interior GmbH's statistical requirements at the time of the start of installation.

11.2 The Customer shall be liable in accordance with the legal regulations in case of a breach of his obligations pursuant to Section 11.1.

12. Privacy Policy

12.1 West Interior GmbH shall collect, process or use personal data only within the scope of data protection regulations. For details, please refer to the Privacy Policy of West Interior GmbH, which you can access under www.West-Interior.com or request from West Interior GmbH at any time.

12.2 Insofar as these Sales and Delivery Terms and Conditions for including the subsequent stipulations, do not result in anything else infringements of data protection regulations, West Interior GmbH shall be liable in accordance with the legal regulations. For damages – irrespective of the legal ground – West Interior GmbH is only liable in the event of intent or gross negligence.

13. Legal Venue or Arbitration, Applicable Law

13.1 The courts in Düsseldorf, Germany, shall have exclusive jurisdiction over all disputes arising out of this contract if the registered place of business of the Purchaser is within the European Union. All disputes arising out of or in connection with the contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (ICC) by one arbitrator appointed in accordance with the said Rules if the registered place of business of the Purchaser is outside the European Union. The place of arbitration shall be Düsseldorf, Germany. The arbitration proceedings be conducted in German.

13.2 The laws of Switzerland including the UN Convention on Contracts for the International Sale of Goods (CISG) of April 11, 1980 shall apply to these Terms of Delivery and the contractual relationship of the contracting parties.

14. Final Provisions

14.1 If one or several provisions of the contract and/or these Terms of Delivery shall be or become invalid or unenforceable, the validity of the remaining provisions of the contract and/or the Terms of Delivery shall not be affected hereby. In such case, the contracting parties undertake to replace the invalid or unenforceable provision by such valid and enforceable provision that comes closest to the intended economic purpose. The same shall apply if the contract is incomplete.

14.2 The contracting parties mutually undertake to take all reasonable measures necessary for achieving the purpose of the contract and to refrain from any act that may affect the fulfillment and performance of the contract.