



General Terms and Conditions AWUKO Abrasives Wandmacher GmbH & Co. KG

§ 1 Scope

- (1) The following delivery terms and conditions apply solely to all deliveries and other services of AWUKO Abrasives Wandmacher GmbH & Co. KG (hereinafter referred to as 'seller'); they only apply in case the buyer is an entrepreneur pursuant to § 14 BGB (German Civil Code), a legal entity under public law or a public fund under public law.
- (2) Divergent, contradictory or additional general terms and conditions of the buyer will merely and to this extent become an integral part of the contract, if the seller explicitly agrees to their validity.
- (3) References to the validity of legal requirements are made only for the purpose of clarification. They are also valid without any clarification to the extent to which they are not modified or explicitly excluded within these general terms and conditions.

§ 2 Contract conclusion

- (1) Offers made by the seller are non-binding and without any obligation. This also applies when catalogues, technical documentations or any further product descriptions or documents -likewise in electronic form- have been handed over to the buyer. The seller reserves the property rights as well as the copyrights to such documents.
- (2) The order of goods made by the buyer shall be deemed as a binding offer, which can be accepted by the seller by means of an order confirmation or by delivery of the goods to the buyer.
- (3) Documents, such as drawings, pictures, specifications of dimensions and weights, which are underlying the offer or the order confirmation, are usually to be considered as approximate values as far as they are not expressly stated as binding.

§ 3 Prices, Terms of Payment, Arrears

- (1) The prices apply ex works plus VAT and exclusively packaging and other shipping and freight charges, unless agreements have been made to the contrary in individual cases. Deliveries starting from a commodity value of at least 260,00 € (excluding VAT) take place within Germany freight paid. Any customs duties, fees, taxes or any other public charges shall bear the buyer.
- (2) The minimum order value amounts 100,00 € (excluding VAT). Orders with a value of goods up to 100,00 € (excluding VAT) are provided with a minimum quantity surcharge. The amount of the surcharge (freight charge, packaging, minimum quantity surcharge) will be communicated to the buyer in the order confirmation.
- (3) The net purchase price is due and payable within 14 days of receiving the invoice. Place of fulfilment for the purchase price payment is the place of business of the seller.
- (4) With expiry of the foregoing term of payment the buyer is in default. During the event of default the purchase price is to be paid interest on to the applicable rate of default interest, which is currently 9 percentage points over the corresponding basic interest rate of the European Central Bank. In addition the lump sum for damages caused by delay accrue in the amount of 20,00 €. The seller reserves the right to assert further damage caused by delay taking into account the lump sum for damages caused by delay, which remains reserved by the buyer.
- (5) In case of circumstances which may lower the creditworthiness of the buyer (e.g. repeated default of payment or non-payment of a cheque) the seller may declare any and all claims from the business relation, regardless of the stipulated terms of payment and demand immediate payment. Deliveries can be made depending on a concurrent payment.



§ 4 Compensation, Right of retention

The enforcement of compensation and the right of retention by the buyer is excluded, unless the compensation claim is uncontended or legally established. In case of defects of the delivery the aforementioned counter rights of the buyer remain unaffected especially according to § 8 of the GTC.

§ 5 Delivery period, delayed delivery

- (1) The specification of the delivery date takes place at the seller's best discretion by acceptance of the order.
- (2) The delivery deadline shall be extended appropriately in case the buyer for his part delays or defaults required or agreed obligations of cooperation. Likewise, any subsequent modifications to the delivered goods made by the buyer shall result in an appropriately extended delivery date.
- (3) In case the seller is not able to comply the binding delivery deadline because of reasons the seller is not responsible for, he will inform the buyer about this immediately and simultaneously notify the buyer about the expected new delivery deadline. In case the service will not be available within in the new delivery period, the seller is entitled to withdraw entirely or partially from the contract; the seller has to reimburse any already rendered consideration of the buyer. Deemed as a case of non-availability of the service is in particular the self-delivery by the external suppliers, if neither the seller nor the external suppliers is responsible or the seller is not obliged to procurement in individual cases.
- (4) The occurrence of a delayed delivery shall be determined by the legal provisions.
- (5) The rights of the buyer according to § 9 of the GTC, as well as the legal rights of the seller remain unaffected, especially in the event of the exclusion of the performance obligations, particularly in the event of impossibility or unacceptability of the performance.

§ 6 Delivery, Transfer of Risk, Default in acceptance, Excess or shortage in quantities

- (1) The delivery is effected ex works of seller, which is also the place of fulfilment. Upon the buyers request and at its expense the goods shall be sent to a different destination. Unless otherwise agreed the seller is entitled to determine the nature of the shipping, especially the carrier, the dispatch route and the package.
- (2) To a reasonable extent the seller is entitled to partial deliveries.
- (3) The risk of accidental loss and accidental deterioration of the goods passes to the buyer at the latest upon handover of the goods to the buyer. In case of purchase to destination the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay passes to the shipper, the carrier or other consigner as soon as the goods have been handed over.
- (4) The seller notifies the buyer as soon as the goods are available for collection. In case the buyer defaults the acceptance of the goods, for instance because the buyer does not pick up the goods on schedule, the buyer fails to act in cooperation or the rendering of service is delayed for reasons for which the buyer is responsible, the seller is entitled to demand a claim for compensation for the damage resulting from it, including additional expenses (e.g. costs for warehousing). In addition, the seller is entitled to further legal claims.
- (5) Excess and shortage in quantities up to 8% of the agreed order quantity are conditioned by the manufacturing process and do not entitle the buyer to complain about the delivery. The purchase price is to be determined by the actual delivered quantity.

§ 7 Retention of Title

- (1) The seller reserves the right to retain title to the sold and delivered goods until complete payment of all mutual and future claims from the purchase agreement and the business relationship.

- (2) The seller shall not be entitled to pledge or to assign the goods that are subject to the retention by way of security to third parties. The seller, however, is permitted to resell the reserved goods in the ordinary course of business. All thereby resulting claims to the business partners the buyer hereby assigns to the seller in advance. The seller accepts the assignment.
- (3) In the event the buyer acts in breach of contract, in particular in the event of non-payment of the due purchase price, the seller shall be entitled to withdraw from the contract in accordance with the statutory regulations and demand that the goods are to be returned on the basis of the reservation of title. In the event the buyer does not pay the due purchase price, the seller may only assert such rights, if the seller has previously set the buyer an appropriate period for payment without result or if the setting of such a period is superfluous according to the statutory regulations.
- (4) The retention of title shall apply to goods resulting from the processing, mixing or combining of the seller's goods in their full value. If during the processing, mixing or combination with items of third parties their property right should persist, the seller thus acquires co-ownership of the new goods resulting thereof in the relation of the invoice of the goods as processed, blended or combined. For the thereby resulting product the same applies as for the goods delivered under retention of title.
- (5) If the value of all securities provided to the seller exceeds the claims by more than 10 %, the seller is obliged to release the excess securities at his own discretion.

§ 8 Quality of the Purchased Good, Claims for Defects

- (1) Any quality or durability warranty shall only be considered to be accepted by the seller if the seller explicitly declares it in writing. Should any object of the contract not display any stipulated quality, the buyer shall have the statutory rights for defects. A special guarantee giving rise to additional rights shall not be assumed. Any agreement about the quality of the goods does not cause a stricter liability as provided by law. Public statements, recommendations or advertising messages of the seller do not constitute any contractual indication of quality.
- (2) Before the buyer can assert warranty claims he has to fulfill his obligation to examine and give notice of defects in accordance to § 377 HGB (German Commercial Code). If a defect becomes apparent during the examination or later, the buyer has to notify the seller immediately in writing. The notification is deemed as immediately if it is made within 7 days, whereby the timely dispatch of the notification is sufficient in order to safeguard the deadline. Irrespective of this obligation for inspection and reporting of complaints the buyer must report obvious defects within 7 days from delivery in writing whereby the timely dispatch of the report is also sufficient here in order to safeguard the deadline. If the buyer fails to carry out the proper inspection and/or report of defects the liability of the seller for the defect which was not reported is excluded.
- (3) If the delivered object is defective the buyer can choose whether the seller shall provide subsequent performance by remedying the defect (subsequent improvement) or by delivery of a flawless object (substitute delivery). The seller may refuse the supplementary performance chosen by the buyer in accordance to § 439 Abs. 3 BGB. If the buyer does not choose a type of the supplementary performance within 14 days, the right to choose passes to the seller. The seller is entitled to make the owed subsequent performance dependent on the fact that the buyer pays the due purchase price. The buyer is however entitled to retain a part of the purchase price which is reasonable in the ratio to the defect.
- (4) The buyer has to grant the seller the time and opportunity required to remedy the owed subsequent performance, in particular to hand over the goods for which a complaint was made for purposes of inspection. In the event of the substitute delivery the buyer must return the faulty object to the seller according to the statutory regulations. The subsequent performance includes neither the removal of the defective item nor to reinstall, if the seller was originally not obliged to reinstall.

- (5) The expenses which are necessary for the purpose of inspection and subsequent performance, in particular transport, route, work and material costs shall be borne by the seller, unless the request for remedy of a defect is unjustified. In this particular case the costs have to be refunded by the buyer.
- (6) Only in urgent cases of endangerment of operational safety or to avert disproportionately extensive damages, the buyer may rectify the defect itself and demand compensation from the seller for the necessary expenditure. The buyer has to notify the seller immediately, preferably prior about such a self-help. The buyer shall not have the right to remedy the defect itself, in case the seller is entitled to refuse the corresponding supplementary performance according to the statutory regulations.
- (7) If the subsequent performance has failed or a reasonable deadline which is to be set by the buyer for the subsequent performance has expired unsuccessfully or it is dispensable according to the statutory regulations the buyer can cancel the purchase contract or reduce the purchase price. However, no right to cancellation exists with an insignificant defect.
- (8) Further claims by the buyer only exist, unless they result from an acceptance of a guarantee, if they arise from these terms and conditions and shall otherwise be excluded.
- (9) Claims for defects, including compensation claims of the buyer, prescribe in one year upon handover of the goods. The short statutory period of limitation does not apply, in case of gross negligence or intent on the seller's part, in case of injury or fatal injuries of persons the seller is liable for or in the case of the liability according to the product liability act.

§ 9 Limitations of Liability

The seller shall be liable, in accordance with both the preceding and the following imitations of liability, for any injury of life, body and health subject to any intentional or grossly negligent violation of obligations by the seller, their legal representatives or performing agents as well as for damages covered by the liability according to the German Product Liability ACT and for damages based on intentional or grossly negligent violations of obligations and on fraud or any assumed guarantee.

- (1) Furthermore the seller shall be liable for damages caused by ordinary negligence to the extent this negligence concerns the violation of such contractual obligations, the fulfilment of which enables the proper implementation of the contract in the first place and the observance of which the contracting party regularly trusts and may trust on a regular basis (so-called cardinal duties such as the service and delivery of defect-free goods). However, the seller shall only be liable to the extent the damages are typically connected to the contract and predictable and is limited to a maximum of twice the particular, contractual gross total per case of damage.
- (2) The limitations of liability contained in the preceding sentences shall also apply to the extent the liability of legal representatives, executives and other performing agents of the seller is affected. Any further liability is excluded regardless of the legal nature of the asserted claim. To the extent the liability of the seller is excluded or limited, this also applies to the personal liability of their employees, staff members, workers representatives and any other performing agents.
- (3) Unless otherwise explicitly agreed, the seller shall not be obliged to pay any contractual penalty respectively to pay lump-sum damages or reimbursement of expenses.
- (4) Our products ZU62SY, ZT62X, ZP88F and GU65Y are liable to a special waste classification. The buyer is responsible for a professional waste disposal.



§ 10 Third-Party Rights, Copyrights

- (1) If deliveries are made according to plans, drawings, models, analytic specifications or other data of the buyer and third-party rights, especially property rights, are being infringed the buyer is obliged to release the seller under the law of obligations from such claims upon first request.
- (2) The seller reserves the right any title and copyrights of samples and drafts. These items and/or information may solely be used in connection with the goods delivered by the seller and may not be made accessible to third parties without the explicit consent of the seller.

§ 11 Applicable Law, Place of Jurisdiction

- (1) The application and interpretation of these general terms and conditions and the conclusion and interpretation of legal transactions with the buyer shall be guided exclusively by the laws of the Federal Republic of Germany. The application of the UN Sales Convention on the International Sale of Goods and of the conflict of laws of the International Private Law is excluded.
- (2) The exclusive place of jurisdiction is the local and competent court of the seller's corporate location, as far as the buyer is a merchant (germ. "Kaufmann"). The seller, however, shall be entitled to take legal action at a court, which is competent in the buyer's place of business or branch.