

# General Terms and Conditions of Business

## (Terms and Conditions of Sale)

### of Wandres GmbH micro-cleaning

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#### **§ 1 Scope of application**

1. All deliveries, services and offers of the Seller shall be made subject to these General Terms and Conditions of Business exclusively. These terms and conditions shall also apply to any future business relations, even if they are not expressly agreed again.
2. The Seller reserves the right to change these General Terms and Conditions at any time if and to the extent that such change is deemed acceptable to the Buyer considering the Seller's interests. The Buyer shall be notified in writing of any changes at least two weeks prior to their coming into force referring to the consequences of failure to make an objection. If no objection is made within two weeks from receipt, the changed General Terms and Conditions of Business shall be deemed to have been accepted.
3. The General Terms and Conditions of Business shall apply exclusively. Any diverging, conflicting or supplementary general terms and conditions of the Buyer shall be binding only if and insofar as they have been explicitly recognized by the Seller. This requirement of consent shall apply in every case, even if the Seller makes delivery to the Buyer without reservation despite being aware of the latter's general terms and conditions of business. A single, expressly declared consent to conflicting conditions of the Buyer shall not constitute a new basis for future transactions.
4. Deviations from these Terms and Conditions shall only be effective if they are confirmed by the Seller in writing or if a separate contract is concluded in this respect between the Seller and the Buyer. Any renouncement of said provision as to form shall also be valid only if made in writing.

#### **§ 2 Offer and conclusion of contract**

1. Offers made by the Seller – including the prices quoted – shall be subject to change without notice and non-binding unless they are explicitly defined as binding. This shall also apply to any offers made in promotional material, advertisements etc. Individual offers made by the Seller shall be binding on it for 90 calendar days. The Buyer shall be bound by its order for 90 days.
2. Declarations of acceptance and all orders shall become effective only if confirmed by the Seller in text form (Article 126b German Civil Code (BGB)).

3. Drawings, illustrations, measurements, weights and other specifications shall be binding only if expressly agreed in writing. Cost estimates, drawings, plans and other documents shall remain the property of the Seller who reserves ownership and copyrights in any such documents. The Seller undertakes not to disclose information and documents designated as confidential by the Buyer to any third party without the Buyer's consent.

### **§ 3 Price and Payment**

1. Unless specifically agreed otherwise, prices shall be understood ex works, exclusive of packaging and exclusive of the applicable statutory value-added tax.
2. Payment shall be made without deduction and free of any charges to the Seller's account within 10 days from the date of invoice. If the Buyer is a consumer, payment shall be effected within 14 days. For goods with a value of more than EUR 20,000.00, payment shall be made as follows:  
The first invoice for 35% shall be issued after receipt of the Seller's acknowledgment of order;  
The second invoice for 55% shall be issued upon acceptance of the goods by the Buyer at the plant of the Seller or, if no such acceptance is made, at the time of the passing of the risk as stipulated in § 5 paragraph 1 of these General Terms and Conditions of Business;  
The third invoice for 10% will be issued 10 days after expiration of the time limit fixed by the Seller for the Buyer's technical inspection.

The seller may – at any time – state payment condition in his quotations that differ from the aforementioned standard conditions. In this case the specific conditions within the respective quotation prevail.

3. With the expiration of the time limit defined in paragraph 2 sentence 1 the Buyer shall be in default. While in default, the Buyer shall pay interest on the purchase price at the applicable statutory interest rate for default. The Seller shall be entitled to prove a higher damage. If the Buyer is a merchant, it shall owe default interest according to Article 353 German Commercial Code (HGB). If the Buyer is not a merchant, it shall pay default interest from the receipt of the goods. If the Buyer exceeds the term of payment by more than 30 days, the Seller shall be entitled to demand payment of all claims it may have against the Buyer including those from other legal relationships with immediate effect, also if payment of such claims has been deferred and/or is secured by discountable bills of exchange. In such event, the Seller can also withdraw from the contract and demand advance payment for any future deliveries.
4. The basis of the contract is the continued creditworthiness of the Buyer. If its financial situation deteriorates, in particular if an application to open insolvency proceedings or a declaration in lieu of an oath concerning its financial status is made, the Seller shall be entitled to insist on advance payment or to withdraw from the contract.
5. The Buyer shall not have any rights of offsetting or retention unless its claim has been legally established or is uncontested. In case of defects of the goods, the rights of the Buyer shall remain unaffected.

6. The right of the debtor to determine redemption is excluded. All payments shall be made to the current account balance. If there is no current account, the sequence of redemption shall be made according to Article 366 subs. 2, 367 subs. 1 German Civil Code (BGB).
7. Agreed cash discounts can only be deducted on condition that the current account shows a positive balance and that the Buyer is not in arrears with payment of previous deliveries.

#### **§ 4 Term of delivery and performance**

1. Dates or terms of delivery shall be agreed in writing to be binding.
2. The term of delivery commences with the dispatch of the acknowledgment of order, but not before the documents, approvals and releases to be submitted by the Buyer or agreed down payments have been received. The term of delivery shall be deemed to have been met if prior to its expiry the object to be delivered has been handed over to the forwarding agent, freight carrier or other person or institution entrusted with the task of performing shipment or if the Buyer has been instructed that the goods are ready for dispatch.
3. Delivery shall be made ex works, which is also deemed to be the place of performance. At the request and expense of the Buyer, the goods can be sent to a different place of destination (sale to destination). Unless otherwise agreed, the Seller shall be entitled to decide the type of shipment (especially shipping company, shipping route, type of packaging). The costs of transport, packaging, transport insurance as well as any cash on delivery or remittance charges shall be borne by the Buyer. This shall also apply to any customs duties, fees, taxes and other public charges of any kind.
4. For delays in delivery and performance due to force majeure or events which make delivery significantly more difficult or impossible for the Seller – including, but not limited to, strike, lockout, administrative orders etc, even if they involve suppliers of the Seller or their subcontractors – the Seller shall not be responsible even if binding delivery times and dates have been agreed. In such a case, the Seller shall be entitled to postpone delivery or performance for the duration of the hindrance plus a reasonable response time. If a delay in delivery occurs for which the Seller is not responsible or if the Seller is released from its obligation, the Buyer shall not be entitled to claim damages for delayed delivery. The Seller may only claim relief by reason of these circumstances if it notifies the Buyer immediately. This provision shall also be applicable where a default in delivery has already occurred. Export and/or import restrictions due to national or international legal acts making delivery by the Seller completely or temporarily impossible shall be regarded as force majeure, no matter whether they come into force before or after the conclusion of the contract, unless the Seller was aware of such restrictions at the time of concluding the contract.
5. If the Seller is responsible for failing to observe agreed deadlines and dates or is in default thus causing damage to the Buyer, the latter shall be entitled to claim compensation for the default (penalty), which shall amount to 0.5% for every full

week of the delay, but not more than 5% of the invoiced amount for the deliveries and services affected by the delay. The Seller shall be entitled to prove a lower damage of the Buyer. Any further claims shall be excluded unless the default is due to gross negligence or intentional behaviour on the part of the Seller.

If we cannot meet binding delivery deadlines for reasons beyond our control (non-availability of the object of performance), we will inform the customer immediately telling him the new expected date of delivery. If delivery is not possible at the new date of delivery either, we are entitled to entirely or partly withdraw from the contract. Any potential payment made by the customer will be reimbursed without delay in this case. Non-availability is given for example if one of our suppliers cannot make a supply to us on time, if we made a congruent covering transaction, if there are other interruptions in the supply chain (e.g. force majeure) or if we are not bound to procure a certain item in a particular case.

6. If the Buyer is in default of acceptance or fails to cooperate or if delivery of the Seller is delayed for other reasons for which the Buyer is responsible, the storage costs incurred by the Seller will be charged to the Buyer equal to at least 0.5% of the invoiced amount for each month commencing one month after advising that the goods are ready for shipment, but not more than 5% of the amount of the invoice. The Buyer shall have the right to prove that storage caused lower or no costs to the Seller. The right to prove a higher damage or further statutory claims of the Seller (including, but not limited to, compensation for extra costs, adequate reimbursement, notice of termination) shall remain unaffected. If the Seller fixed an adequate deadline and such deadline expires without result, the Seller shall be entitled to dispose of the object to be delivered in some other way and to effect delivery to the Buyer after a reasonable extension of the time limit.
7. The Seller shall be entitled at any time to effect part deliveries and part performances.
8. Observance of the delivery date shall be subject to the fulfilment of the contractual obligations on the part of the Buyer.

## **§ 5 Passage of risk**

1. The risk of accidental loss or accidental deterioration shall pass to the Buyer not later than with the handing over of the goods. Where the goods are sent to a different place of destination, the risk of their accidental loss and accidental deterioration as well as the risk of delay shall pass to the forwarding agent, freight carrier or other person or institution entrusted with the task of performing shipment with the handing over of the goods already. This shall also apply in those cases in which free delivery has been agreed. Delivery is also deemed to have been effected if the Buyer is in default of acceptance or if shipment has been postponed at its request.
2. Delivered items shall be accepted by the Buyer also in the presence of a non-substantial defect without prejudice to the rights under these General Terms and Conditions of Business.

## § 6 Warranty

1. For material defects, including the absence of specifically agreed characteristics, the liability of the Seller shall be limited as follows:
  - a. The supplier shall have the option to remedy parts that show a material defect or to replace them by parts free from the defect provided that its cause was present already when the risk passed.
  - b. If the Seller is not prepared or not able or refuses to remedy the defect or replace the item or if such corrective measures are inappropriately delayed for reasons for which the Seller is responsible or if repair or replacement of the defective delivery fails, the Buyer shall have the option either to withdraw from the contract or to demand adequate reduction of the purchase price.
  - c. No warranty is assumed for defects caused by the following circumstances:

Non-observance of the Seller's operating instructions, inappropriate or improper use, incorrect assembly or starting up by the Buyer or any third party, unless this is due to errors in the instructions for assembly, natural wear and tear, parts subject to regular wear and tear, faulty or negligent handling, inappropriate working and substitute materials, incorrect construction work, unsuitable building site, chemical, electrochemical or electrical influences, provided that these are not attributable to a fault of the Seller, improper maintenance including, but not limited to, non-adherence to the maintenance to be performed according to the operating instructions or brochure as well as any modifications made to the delivered goods by the Buyer, in particular the exchange of parts or use of consumables not corresponding to the original specifications.
  - d. The Buyer shall agree with and grant to the Seller the time and opportunity required to carry out all the repair work and replacements reasonably deemed necessary by the Seller; otherwise the Seller shall be released from its liability for defects.
  - e. Only in urgent cases where operational safety is jeopardized and to prevent disproportionately high damage or when the Seller has delayed remedying the defect, the Buyer shall be entitled to remedy the defect itself or to have it remedied by any third party and to demand reimbursement of the necessary costs from the Seller; such urgent cases always require immediate notification of the Seller.
  - f. Provided that the complaint is found to be justified, the costs resulting from repair or replacement shall be borne by the Seller.
  - g. For deviations from standard configurations, which the Buyer demands after renouncing the technical inspection of the products at the Seller's plant, the Buyer shall reimburse the Seller for the resulting costs.

- h. For the consequences resulting from modifications or repair work improperly performed by the Buyer or any third party without the prior consent of the Seller, no liability is assumed.
- 2. Deliveries shall be inspected upon receipt. For obvious defects, a written complaint indicating the packing list number shall be made within two weeks; otherwise warranty is excluded. For merchants Article 377 German Commercial Code (HGB) shall be applicable. Defects that cannot be detected within said deadline even after careful inspection shall be notified to the Seller in writing immediately after detection.
- 3. If the Buyer is not a consumer, the Seller shall be liable for defects of used goods only if agreed with the Buyer in writing. If the Buyer is a consumer, the warranty period for defects of used goods is one year with the exception of cases in which the Seller has fraudulently concealed a defect or guaranteed the quality of the goods.
- 4. For defects of title, the Seller shall be liable as follows:
  - a. If the use of the delivered item violates intellectual property rights or copyrights, the Seller shall obtain at its expense the general right of further use for the Buyer or modify the delivered item in a manner acceptable to the Buyer in such a way that it does no longer violate industrial property rights.
  - b. If this is not possible under economically reasonable conditions or during an adequate period of time, the Buyer shall be entitled to withdraw from the contract. Under the above conditions the Seller shall also have the right to withdraw from the contract.
  - c. Moreover, the Seller shall indemnify the Buyer against any uncontested claims raised by the relevant holder of intellectual property rights or claims of such holder which have been established by final court decision. Said obligation on the part of the Seller shall only be applicable
    - if the Buyer informs the Seller of the claimed violation of industrial property rights or copyrights without delay,
    - if the Buyer adequately supports the Seller in warding off the claims raised and allows the Seller to carry out the modification measures as defined in § 6 paragraph 4 of these General Terms and Conditions of Business,
    - if all protective measures including any extrajudicial settlements are left to the Seller,
    - if the defect of title is not due to an instruction given by the Buyer and
    - if the legal violation was not caused by an unauthorized modification of the delivered item by the Buyer or use of the item in a manner which does not comply with the contract.

## **§ 7 Statute of limitations**

1. If the Buyer is not a consumer, the limitation period is
  - a. one year from the delivery of the goods for claims for return of the purchase price due to withdrawal from the contract or reduction of the purchase price, but for properly notified defects not less than three months from the effective notice of withdrawal or reduction of the purchase price;
  - b. one year for any other claims due to material defects;
  - c. At the latest, claims become statute-barred at the expiration of the maximum limitation periods stipulated in Article 199 German Civil Code (BGB).
2. However, the statutory periods of limitation shall always apply in case of damages and compensation for wilful intent, gross negligence, warranty, fraudulent intent as well as for injuries to life, body and health and for claims based on the Product Liability Act and recourse claims of the Buyer according to Article 478 German Civil Code (BGB).

## **§ 8 Impossibility and inability**

1. The Buyer may cancel the contract if the Seller is definitely unable to render complete performance before the passing of the risk. The same shall apply if the Seller is permanently unable to render performance.
2. If the impossibility occurs during the default of acceptance or through the Buyer's fault, the latter shall remain obliged to effect payment.

## **§ 9 Retention of title**

1. The delivered objects (goods subject to reservation of title) shall remain the property of the Seller until all its claims against the Buyer under the contractual relationship have been fulfilled. As far as the total value of all the securities to which the Seller is entitled exceeds the total amount of all secured claims by more than 20%, then on demand of the Buyer the Seller shall release a corresponding part of such securities; the Seller shall have the choice of release between different securities.
2. Goods subject to retention of title shall not be pledged or assigned for security purposes by the Buyer and shall be resold only to distributors within the usual course of business and subject to the proviso that the distributor is paid by its customer or makes the reservation that the property will pass to the customer only after the latter has fulfilled its obligations to pay.
3. If goods subject to reservation of title are resold by the Buyer, it assigns hereby to the supplier all its future claims arising from the resale to its customers including any ancillary rights – and including the settlement of any outstanding balances – by way of security without the need for any further special declarations. If the goods subject to reservation of title are sold together with other objects and no

separate price is agreed for the goods subject to retention of title, the Buyer shall assign to the Seller that part of the total price corresponding to the price of the goods subject to retention of title invoiced by the Seller.

4. The Buyer is entitled to process the goods subject to retention of title or to combine or mix them with other objects.
  - a. Processing shall be effected for the Seller. The Buyer shall handle the new product thereby created for the Seller with the care of an ordinary merchant. The new product shall be deemed to be merchandise subject to retention of title.
  - b. The Seller and the Buyer agree already now that upon combination or mixture with other goods not belonging to the Seller the latter shall have the co-ownership in the new product to the amount resulting from the ratio of the value of the combined or mixed merchandise subject to retention of title to the value of the remaining merchandise at the time of combining or mixing it. In so far, the new product shall be deemed to be merchandise subject to retention of title.
  - c. The provision concerning the assignment of claims according to paragraph 3 shall also apply to the new product. However, the assignment shall apply only to the amount corresponding to the value of the processed, combined or mixed merchandise subject to retention of title and invoiced by the Seller.
  - d. If the Buyer combines the goods subject to retention of title with movable or immovable property, it shall assign its claim payable to it as remuneration for the combination including any ancillary rights to the Seller by way of security to the amount of the ratio of the value of the combined reserved merchandise to the remaining combined merchandise at the time of combining them without the need for any further special declarations.
5. Until further notice, the Buyer shall be entitled to collect assigned claims from resale. If there is good cause, and in particular in the event of a default in payment, suspension of payments, insolvency proceedings being opened, a protest being made in respect of a bill of exchange or well-founded evidence of over-indebtedness or an imminent inability to pay on the part of the Buyer, then the Seller shall be entitled to revoke the Buyer's collection powers. Moreover, the Seller may disclose the security assignment after prior warning and, observing a reasonable period of notice, realize the assigned claims and demand that the Buyer discloses the assignment to its customer.
6. In the event of attachments, seizures or other dispositions or interventions by any third party, the Buyer shall notify the Seller without delay. In the event of a substantiated legitimate interest, the Buyer shall provide the Seller with the information and hand over the documents required to claim its rights against the customer.
7. If the Buyer violates any of its obligations, including, but not limited to, default in payment, the Seller may, after expiration of a reasonable deadline for performance set to the Buyer by the Seller, take back the goods or withdraw from the contract; the statutory regulations on the dispensability of setting deadlines remain unaffected. The Buyer is obliged to return the goods. Taking back the



goods or exercising the right of retention of title or seizing the goods subject to reservation of title by the Seller does not imply withdrawal from the contract, except if expressly stated by the Seller.

8. The Seller shall be entitled to insure the delivered item at the expense of the Buyer, unless the Buyer furnishes proof to have concluded such insurance itself.

## **§ 10 Constructional changes**

The Seller reserves the right to make constructional changes at any time; it shall not be obliged, however, to make such changes also on products already delivered.

## **§ 11 Liability**

1. Unless otherwise provided in these General Terms and Conditions including the provisions below, the Seller shall be liable for any breach of contractual and extra-contractual provisions according to the relevant statutory regulations.
2. In the event of wilful intent and gross negligence, the Seller shall be liable to pay damages irrespective of the legal basis.

In the case of simple negligence, the Seller shall only be liable for damage to life, body and health and for damage due to the violation of a material contractual duty (i.e. an obligation the fulfilment of which is indispensable for the outcome of the contract and the observance of which the contractual partner can expect and rely on). In the latter case, the Seller's liability shall be limited to compensation of the typical foreseeable damage.

3. The restrictions of liability stipulated in paragraph 2 shall not apply insofar as the Seller has fraudulently concealed a defect or assumed warranty for the quality of the goods. The same shall apply to claims of the Buyer under the Product Liability Act.
4. For a breach of an obligation not constituting a defect, the Buyer may withdraw from or terminate the contract only if the Seller is responsible for the breach of the obligation. An unrestricted right of termination on the part of the Buyer (in particular as stipulated in Articles 651, 649 German Civil Code) is excluded. In all other respects, the statutory requirements and legal consequences shall be applicable.
5. The Seller shall not be liable for damage caused by a breach of an obligation by one of its legal representatives or vicarious agents through no fault of their own.

## **§ 12 Secrecy and data protection**

1. The contracting parties undertake to treat all materials made available or disclosed to them by the other contracting party prior to or during the execution of the contract (e.g. drawings, documents, models, information) which are legally protected or contain business or trade secrets or are designated as confidential,

as confidential also after termination of the contract unless they are part of the public knowledge without violation of the obligation to observe secrecy. The contracting parties shall keep and secure this material such that access by any third party is ruled out. Reproduction of such material is permitted only for business purposes and in compliance with copyright law.

2. The Buyer shall make this material available solely to those staff members or other third parties who require access to it in order to execute their official responsibilities. It shall instruct these persons regarding the confidentiality of the materials in question.
3. The Seller shall observe the data protection regulations in processing the Buyer's data required for business purposes.

### **§ 13 Assignment**

The Seller shall be entitled to assign its rights under the contractual relationship with the Buyer. The Buyer may assign its rights under the contractual relationship with the Seller only with the latter's consent.

### **§ 14 Use of software**

1. In as far as software is included in the delivery, the Buyer is granted a non-exclusive right to use the delivered software and its documentations. It is made available for use on the delivered item intended for that purpose. The use of the software on another system is not permitted.
2. The Buyer may reproduce, revise and translate the software or convert it from object code to source code only to the legally permitted extent (Article 69 a ff. German Copyright Act (UrhG)). The Buyer undertakes not to remove manufacturer information – in particular references to copyright – or modify it without the explicit prior consent of the Seller.
3. All other rights to the software and documentations including any copies shall remain with the Seller and the software supplier respectively. The granting of sub-licences is not permitted.

### **§ 15 Applicable law, venue and place of performance**

1. If the Buyer is a merchant, a legal entity under public law or a special fund under public law, Buchenbach shall be the place of performance and exclusive place of jurisdiction for deliveries and payments as well as for any disputes arising between the parties.
2. The relations between die contractual parties shall be governed by the law of the Federal Republic of Germany exclusively excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG) of 1980.

## **§ 16 Invalidity**

Should any of the provisions of these General Terms and Conditions of Business be invalid or unenforceable or become invalid or unenforceable later in whole or in part, the validity of the remaining provisions shall not be in any way affected or impaired. The same shall apply if it is found that these General Terms and Conditions of Business contain gaps. In such a case, the parties undertake to replace the invalid, impracticable or missing provision by such provision the effect of which will approximate best the meaning and purpose to be achieved by these General Terms and Conditions of Business or the will of the parties. The above provision shall also apply, if the invalidity of a provision is a consequence of a performance or time specification; a legally permissible measurement of performance or time which comes closest to the intended purpose shall then be deemed agreed.