

# Sales Terms

## airwerk GmbH

### 1. General

#### 1.1

The following conditions apply to all our consultations, offers, sales, deliveries, services and legal relations between us and our customer, if no other contractual agreements apply. Business conditions of our customers that oppose our business conditions or the legal regulations in part or in whole or supplement one of these, are herewith explicitly rejected, unless we agreed to the terms in writing on a case-to-case basis. Such conflicting terms shall not become part of the contract even if we perform delivery whilst being knowledgeable of conflicting terms. If our customer was not made aware of the business conditions upon signature of the contract or on any another occasion, the business conditions shall nevertheless be applied if the customer knows or has knowledge of these conditions from prior business dealings.

#### 1.2

Our terms and conditions only apply to contractors within the meaning of § 14 BGB.

#### 1.3

With the exception of clause 13.5, our conditions shall also apply for all future legal relations between us and our customer even if no separate reference to these conditions has been made.

#### 1.4

In addition, German law shall apply exclusively to contractual relations. The application of the UN Convention on Contracts for the International Sale of Goods and German International Private Law is excluded.

#### 1.5

Verbal ancillary agreements do not exist. Agreements, amendments or additions to the contract that differ from these conditions in individual cases can only be made by the management or by specially appointed legal representatives. Verbal agreements or declarations by others shall only be valid if they are confirmed in writing by the supplier's management or by a specially appointed legal representative.

### 2. Prices

#### 2.1

Our prices for deliveries shall be ex works, unless explicitly agreed otherwise, free on truck/wagon excluding sales tax and packaging.

#### 2.2

If, after conclusion of the contract, changes in the calculation basis due to higher wage and material costs, an increase in value-added tax or other circumstances, in particular technically-related changes to the calculation, we are entitled to increase the contract price in an appropriate ratio to the change in the calculation basis. This also applies to call orders.

### 3. Deliveries and Delivery Periods

#### 3.1

If, after conclusion of the contract, there are indications that the performance of our customer is endangered, such as payment delays and suspensions, the opening of bankruptcy proceedings, assignment of current assets as security, unfavorable credit reports from banks or other lenders or credit insurers, we are entitled to refuse our performance and, after a fruitless deadline for the provision of collateral in the form of a directly enforceable guarantee or bank guarantees or advance payments, to withdraw from the contract and/or demand compensation. No deadline shall apply if it is apparent that solvency of our customer is in danger.

#### 3.2

The delivery dates stated by us are approximate dates. Fixed dates – which must be explicitly labelled as such by us – must be confirmed by us in writing. The occurrence of our delay in delivery is determined by law. In any case, however, a reminder from the customer is required.

#### 3.3

With deliveries made in several parts, we shall be entitled to make partial deliveries if this is reasonable for the customer. With appropriate prior information we are also entitled to make delivery ahead of time.

#### 3.4

In the case of call orders, a reasonable delivery period shall be deemed agreed, which does not fall short of 6 weeks after the call. If production and acceptance dates have not been agreed upon, we can demand a binding specification no later than 3 months after confirmation of the contract. If the customer does not respond to this request within 3 weeks after sending the request, we are entitled to set a 2-week grace period and after fruitless expiry to demand compensation and/or withdraw from the unfulfilled part of the contract. The same applies if, after expiry of the delivery period, the subject matter of the contract or parts thereof have not been purchased or have not been delivered due to the fault of our customer.

#### 3.5

Insofar as circumstances, which we are not responsible for, complicate the execution of accepted orders, cause a delay or make the execution impossible, we are entitled to postpone the delivery or the remaining or partial delivery for the duration of the hindrance, or withdraw from the contract in whole or in part, without this entitling the customer to demand compensation. We are not responsible, for example, for official interventions by authorities, operational disturbances, strikes, lockouts, labor disturbance due to political or economic conditions, shortages of necessary raw materials and operating materials, energy supply difficulties, transport delays caused by traffic disruptions or unavoidable events occurring at our premises, that of our subcontractors or in third parties companies upon which our own operations are dependent. The aforementioned applies even if these events occur at a time when we are already in default.

#### 3.6

Our customer can only set a deadline for delivery if the agreed upon delivery date has been exceeded by more than 2 weeks. This grace period must be appropriate. After fruitless expiry of the grace period, our customer can withdraw from the contract. Compensation claims against us for breach of duty can only be made according to clause 9.

#### **4. Dispatch and Risk Assumption**

##### **4.1**

The delivery of the contractual item is carried out by us ex works at the risk of our customer, even if the freight and other costs are at our expense. The contractual item shall only be insured against damages in transit at the explicit written instruction of the customer and the costs for this will be carried by the customer.

##### **4.2**

If it is agreed that the customer will arrange for pick-up of the goods but this does not take place within 8 days after the agreed date, we will arrange the shipment by means of a shipping method that seems favorable to us and the costs incurred will be carried by our customer.

##### **4.3**

In the event of a sale ex works, we will place the goods on the vehicle of the collector according to the instructions of the driving personnel. The transportation company picking up the goods is responsible for securing the goods for transport and operation in accordance with currently accepted load securing practice and will only employ driving staff trained accordingly. The transportation company contracted for pick-up will also provide the necessary load securing aids.

##### **4.4**

If the shipment is delayed at the request of our customer or by default of acceptance, the risk is transferred upon notification of readiness for shipment. The contractual goods will then remain in our custody in the name and at the expense of our customer.

#### **5. Reservation of Title**

##### **5.1**

The contractual goods shall remain our property until all our claims have been paid in full including future claims, which are due to us against our customer. This also applies to payments of specially designated receivables until the current account balance of our customer has been settled in full.

##### **5.2**

Such reserved items will be stored appropriately and separately from all other items at the expense of our customer. At our request the reserved items have to be specially labelled and insured against damage, perish and loss at the expense of our customer. Upon our request, our customer must submit to us the corresponding insurance transaction. Our customer shall assign his claims from the insurance contracts to us in advance in the amount of the value of the reserved ownership goods and agrees to have insurance payments made to us. In the case of breach of duty by the customer, in particular in the event of a delay in payment, we shall be entitled to demand the hand-over of the contractual goods without the setting of a grace period and/or to withdraw from the contract, as well as being entitled to obtain access for our agents to the business and premises of our customer; the customer is obliged to surrender the contractual goods. A demand for the surrender of the contractual goods shall not constitute withdrawal from the contract by us, unless this is expressly stated.

##### **5.3**

Our customer has the irrevocable right to sell our reserved property in the ordinary course of business - as long as he meets his obligations to us as agreed. In this case, or upon delivery of the reserved property to a third party, irrespective of the value or condition, or assembly, the customer thus assigns his claims with all ancillary rights, including possible arising claims for compensation against his customer, as a result of

the sale, delivery or assembly to a third party, in the value of the invoice amount for our delivery until he has fully repaid all of our claims from these deliveries.

#### 5.4

If our reserved property is worked with or processed or mixed or transformed, the working or processing or mixing or transformation will be performed for us, but without warranty. In all these cases, we are entitled of the co - ownership of the new article in proportion of the value of our reserved ownership to the new items at the time of processing or mixing.

#### 5.5

In the event of non-assignment clause by resale, installation or delay of payment, our customer is obligated to announce the advance assignment of its third-party purchaser. If the reserved property that we deliver and other not-related items shall be sold to a third-party, the part of the claim for the total price that is equivalent to the invoice value of our deliveries will be assigned to us. In case of default of payment of the customer, we are entitled to collect the value of the assigned claims from the third party debtor directly.

#### 5.6

Extraordinary disposals by our customers, such as pledging, use of the goods as security and transfer of our reserved ownership, are inadmissible. Our customer is obliged to notify us immediately if any third party accesses the objects belonging to us through pledge or any other kind of impairment of our property. He shall bear the costs of any intervention legal disputes, if he is responsible for the access to the reserved ownership goods.

#### 5.7

If the realizable value of the total collateral security stemming from the business relationship exceeds our claims by more than 10%, we will release securities of our choice at the request of the customer.

### **6. Payments**

#### 6.1

Invoices are, unless agreed otherwise, to be paid in the agreed currency within 30 days from date of invoice without deduction. Discount will only be applied upon special agreement and is to be determined from the ex-works (Emstek) invoice value.

#### 6.2

Payments are not considered valid and in effect until we are able to dispose of the amount freely. Bills of exchange and checks will be accepted only upon special agreement. Discounting and bill of exchange charges will always be borne by our customer. If the bill of exchange is agreed upon, the duration of such bills of exchange shall not exceed 90 days from the date of the invoice.

#### 6.3

Incoming payments will be applied in the settlement of the oldest or the least hedged liabilities upon our discretion.

#### 6.4

Partial deliveries will be charged immediately and are payable separately, regardless of the completion of the total delivery. Advance payments made upon contract closure will, in the absence of other written agreement, to the oldest partial deliveries.

## 6.5

Offsetting with counterclaims is only permissible, if these are legally established counterclaims or counterclaims accepted by us. The same applies to the assertion of rights of retention at the amounts stated in our invoices.

## 6.6

In the case of the authorization for collection within the scope of the SEPA direct debit procedure, a shortened period for the transmission of the pre-notification of at least three days before the execution of the debit is deemed as agreed, whereby we are, however, entitled to a longer period for the pre-notification.

## 7. Compensation and Rescission

### 7.1

If the agreed payment terms are not met by the customer, we are entitled to assert our rights in accordance with § 288 BGB (assertion of interest on arrears).

### 7.2

If our customer is in default with the acceptance of the delivery or service or is in default of payment, we are also entitled, after an adequate grace period, to withdraw from the contract in full or in part and/or to demand compensation for damages equal to 20% of the purchase price/order value subject to proof of a more concrete higher damage, in particular the cost of the repossession, unless the customer proves lower damage. A postponement is not necessary if, after conclusion of the contract, indications for the endangering of our customer's solvency within the meaning of clause 3.1 arise.

## 8. Warranty

### 8.1

The agreed upon nature of the contractual goods is based exclusively on the contractual agreements with our customer and not on other commercial statements, prospectuses, consultations and the like, for which we do not assume any warranty. The assurance of a property or the assumption of a guarantee z. B. in the sense of § 443 BGB is not connected with the agreed condition. Because of a variety of possible uses of our products we do not assume any warranty for the actual use and specific operating conditions of our products at the customer, insofar as this has not been assured in writing and the customer's specific operating conditions were described accurately to us in writing. We shall not be liable for any information or advice provided, if these, on a case-to-case basis, are not explicitly part of the contract. Information and advice in the context of the initiation or the processing of an order represent in general no essential contractual obligation and are therefore only subject to a liability in the case of gross culpability, with limitation to the foreseeable damage.

### 8.2

In the case of purchases, we shall be liable for defects, excluding further claims as follows:

a) The provisions of § 377 HGB (German Commercial Code) shall apply with regard to the customer's duty to notify and examine the goods.

b) Our customer must to give our agents the opportunity to inspect and examine the defective contractual goods, in particular to entrust representative test samples and to make all reasonable efforts at troubleshooting. Otherwise, any warranty claims are void.

c) We provide a guarantee for faultless material as well as professional manufacture for one year after delivery. The above statute of limitations shall not apply in the case of supplier regress (§ 478 BGB) and in the case of fraudulent intent. The same is valid for the claims for damages from clause 9.2 and for claims according to the product liability law. Therefore, only the statutory limitation periods apply. The same applies to buildings and newly manufactured items that have been used in accordance with their customary use for a building and have caused its defectiveness (§ 438 para. 1 no. 2 BGB).

d) In the case of improper use, treatment and storage of the contractual goods, non-compliance with our instructions and guidelines, damage and destruction of the contractual goods after the transfer of risk, warranty claims are void.

e) The production process of technically complex products, that include natural raw materials, can of course lead to deviations in various parameters and properties, including in the dimensions and material of the products. Such commercial and/or manufacturing-related deviations in dimension and material are not a defect, as long as they do not adversely affect the functionality and general purpose of our products and those deviations do not entitle the customer to state an objection to the contractual goods. For tolerances, if applicable, DIN standards and our factory standards apply.

f) Deliveries of up to 10% more or less than the quantity agreed upon are permissible. The total price shall be adjusted accordingly.

G) Defects shall be remedied at our discretion by repair or replacement. We are entitled to make remedial performance conditional upon the buyer paying the purchase price due. The customer is, however, entitled to withhold a reasonable part of the purchase price in proportion to the defect. To rectify the defect, our customer has to grant us reasonable time and opportunity. If this is refused, warranty claims of any kind are void. If the remedial performance fails several times, our customer can also withdraw from the contract or demand reduction of the purchase price. However, a right of withdrawal does not exist in the case of a minor defect. The customer's claims for damages or compensation of futile expenses can only to be made in accordance to clause 9, otherwise they are excluded.

## **9. Other Liability**

### **9.1**

Unless otherwise stated in these general business terms, including the following terms and conditions, we shall be liable in the event of a breach of contractual and non-contractual obligations in accordance with the relevant statutory provisions.

### **9.2**

We are liable for damages - irrespective of the legal basis - in the case of intent and gross negligence. In the case of simple negligence, we are only liable:

a) For damages resulting from injury to life, body and health,

b) For damages resulting from a breach of an essential contractual obligation (obligation whose fulfillment is essential for the proper implementation of the contract and on whose fulfillment the customer is allowed to rely on, and may rely on, regularly); in this case, however, our liability is limited to the foreseeable, typically occurring damage.

c) Any further claims of the customer, in particular any form of claims for damages, namely for consequential damages, are excluded. In particular, we shall not be liable for damage which has not occurred to the delivery item itself, such as installation and removal costs or other costs.

d) If there is a liability according to the preceding paragraphs, this will, as far as it is valid for the individual case, be limited to claims covered by our the liability insurance.

### 9.3

The limitation of liability obtained from clause 9.2 shall not apply if we fraudulently concealed a defect or have given a guarantee for the quality of the goods, as well as in the case of claims covered by the product liability law, cases of other mandatory legal liability and personal injury.

### 9.4

The customer can only terminate or withdraw from the contract due to a breach of duty, which is not a defect, if we are responsible for the breach of duty. A free right of termination for the customer (in particular pursuant to §§ 651, 649 BGB) is excluded. Apart from that, the legal requirements and legal consequences apply.

## 10. Confidentiality

Our customer is obligated to only use business and trade secrets that have been entrusted to him or become known to him on the occasion of the business relationship exclusively for the purpose of implementing this contract, as well as not to use this confidential information for the duration and after the termination of the contract and to keep such information secret from third parties.

## 11. Property Rights

### 11.1

Designs, design drawings or workshop documents and samples which we make, remain our property.

### 11.2

We are entitled to all copyright and, if applicable, industrial property rights for designs made by us or commissioned by us to a third party, even if our customer bore the costs for this.

## 12. Distant Delivery

### 12.1

In the case of distant delivery, the contract is concluded by receipt of our order confirmation, which will be transmitted to the customer (immediately after receipt of the customer's complete and correctly filled-out order) in writing, by e-mail, by fax or via the Internet at our own discretion.

### 12.2

If the customer exercises his right of return according to clause 12 of these terms and conditions and he used the goods between delivery and return, he has to reimburse us for the value of his use of the product.

### 12.3

The customer is obligated to pay compensation for the destruction or the deterioration of the goods as well as for the inability to return the goods in the period between the delivery and a return of the goods. Any further liability of the customer regarding a breach of the duty to return the goods shall in accordance with the statutory regulations. The customer is responsible for restoring the product in a way that is favorable for the resale before returning the goods, in particular to return it in the complete original packaging.

## 13. Other Terms

### 13.1

We are entitled to process the data received from our customer based on the business relationships in accordance with the provisions of the German Federal Data Protection Act, in particular to provide credit insurers with the data required for the credit insurance.

### 13.2

Under no circumstances may the customer assign to another party the claims to which the customer is entitled based on our business relationship.

### 13.3

Should one of the above clauses be invalid, the effectiveness of the other provisions and the contract shall not be effected. Clauses which become invalid will be replaced by new clauses that have the same economic focus as their aim. Insofar as clauses have not become integral parts of the contract, the content of the contract shall be based on the statutory regulations.

### 13.4

The place of performance for the delivery is Emstek/Lower Saxony. The place of performance for the payment is the registered office of our company.

### 13.5

The sole place of jurisdiction for all disputes arising from this contractual relationship, including those arising from bills of exchange, checks and other documents, shall be the registered office of our company if our customer is a merchant or has the legal right to be a merchant within the meaning of the German Commercial Code (HGB). If a contracting party fulfills the requirements of § 38 (2) ZPO (Code of Civil Procedure) and has no general place of jurisdiction in Germany, the place of jurisdiction is Oldenburg / Lower Saxony.