



General Terms of Sale and Delivery

GTSD 01/13

1. General Provisions

1.1 These General Terms of Sale and Delivery form the basis, binding in law, for the contractual relationship between the Purchaser and Wagner AG unless any special agreements to the contrary have been made in writing.

1.2 These Terms invalidate all alternative terms prescribed by the Purchaser - in whatever form - unless Wagner has accepted these in writing.

2. Design of Parts

Except where anything to the contrary has been expressly agreed, Wagner AG is not the designer of the parts it produces and therefore assumes no responsibility for their design.

3. Offer and Order

3.1 The Purchaser's request for quotation must be accompanied by a technical specification.

3.2 The offer made by Wagner AG is non-binding unless it is expressly stated as binding for a specified period.

3.3 Wagner AG shall become obliged to fulfill an order only after it has issued an order confirmation in writing.

4. Preliminary studies and Proposals

4.1 The property rights of Wagner AG to the preliminary studies do not pass to the Purchaser with the sale of the parts. Exception: where preliminary studies have been ordered separately and paid for in full.

4.2 Wagner AG reserves the right to charge for preliminary studies where the order is not received within three months of submission of the preliminary studies.

4.3 Without its express permission the Purchaser may neither use proposals made by Wagner AG himself nor disseminate them to other parties.

5. Production Aids

5.1 All production aids (gages, processing or monitoring devices, casting tools, punching tools, etc.) supplied by the Purchaser must clearly demonstrate the characteristics necessary for assembly and use and must be supplied to the location specified by Wagner AG at no cost. Responsibility for ensuring that these production aids exactly match the plans, and the functional specifications document remains with the Purchaser.

5.2 If Wagner AG is commissioned by the Purchaser to produce tooling, Wagner AG shall do so in agreement with the Purchaser and at the Purchaser's expense in accordance with the requirements of its own manufacturing technology.

5.3 The ownership and the intellectual property rights, including know-how, to the production aids designed or improved by Wagner AG remain with Wagner AG.

5.4 The production aids remain with Wagner AG until they are destroyed. This also applies if they have been paid for in full or in part by the Purchaser. Wagner AG is responsible for maintaining the molds. The costs of such maintenance are borne by Wagner AG. The costs of follow-on tools are borne by the Purchaser. If no subsequent orders are received within three years of the date of the last delivery, Wagner AG reserves the right to destroy the tools unless otherwise agreed.

6. Inserts

Inserts supplied by the Purchaser are the sole and unique responsibility of the Purchaser and must be in good condition. They must be supplied to Wagner AG free of charge and freight paid in sufficient quantity (order quantity + 10%).

7. Delivery Times

7.1 Delivery times begin from the date of order confirmation by Wagner AG, but under no circumstances before the date by which all documents, manufacturing aids and execution details have been made available by the Purchaser.

7.2 The binding nature of the delivery time must be agreed with the Purchaser in accordance with the nature and extent of the delivery. Without such clarification the delivery date can only be treated as approximate.

7.3 In the event of operational disruptions or force majeure events, Wagner AG shall be released from its obligation to comply with the delivery time. This also applies if the aforementioned hindrances occur during a default or with one of its sub-suppliers.

7.4 The Purchaser cannot under any circumstances derive any claim for damages of any kind as a result of failure to comply with the delivery time.

8. Packaging

8.1 Except under previous agreements to the contrary between Wagner AG and the Purchaser, the packaging materials of a delivery are charged to the Purchaser and become his property after such payment is made.

8.2 Special containers and other materials that are the property of Wagner AG must be returned by the Purchaser in good condition, freight paid and not later than 30 days from receipt; otherwise, they will be invoiced by Wagner AG to the Purchaser. Exceptional cases such as consignment warehouses or similar must be negotiated on an individual basis.

8.3 If the packaging material to be used by Wagner AG is the property of the Purchaser, the Purchaser must deliver it in good condition not later than by a date previously agreed with Wagner AG and to a location specified by Wagner AG.

8.4 Mandatory legal regulations remain reserved.

9. Conditions of Delivery

9.1 Normally EXW Waldstatt

Except where agreed otherwise with the Purchaser, delivery of parts is always ex works (EXW Waldstatt). The risk is transferred to the Purchaser at the moment of the selection of goods and notification of this to the Purchaser.

9.2 Other international commercial terms agreed with the Purchaser

The interpretation of the supply clauses FCA, CPT, CIP; DAT; DAP, DDP, FAS, FOB, CFR, CIF is in accordance with Incoterms (International Commercial Terms) 2010, Publication 715 of the International Chamber of Commerce, Paris, unless express articles of the contract specify otherwise.

If information about the point of destination is missing or if delivery is impossible for reasons that are not the fault of Wagner AG, delivery shall be deemed to have been made when Wagner AG declares that the goods are ready for shipping. The parts are then invoiced and stored at the cost and risk of the Purchaser.

10. Transport

10.1 EXW deliveries

Transport costs are charged as per the tariffs of the Swiss Road Transport Association (ASTAG).

10.2 FCA deliveries abroad

Costs are billed directly by the forwarding agent.

10.3 Other Incoterms

For all other clauses Wagner will pay the transport costs, or the transport costs are included in the goods price, as appropriate.

11. Price

11.1 Prices are fixed or, depending on the contractual agreement, may be sliding-scale prices that Wagner AG may modify periodically to cover changing costs (e.g. raw materials prices).

12. Payment terms

12.1 The place of fulfillment for payments is the company headquarters of Wagner AG. Except where otherwise agreed, payments are net without a discount and must be made within 30 days of the invoice date.

12.2 Any arrears shall attract, following one written reminder, interest on arrears at the bank rate of the Swiss National Bank plus 4%.

13.3 Only such counterclaims of the Purchaser as are recognized by Wagner AG in writing or legally established may be offset against the claims invoiced by Wagner AG.

13. Weight of Parts

Wagner AG reserves the right to adapt the actual weight of parts and to alter the price accordingly, irrespective of the weight specified in the offer and order.

14. Quantities

The delivery quantities agreed between the Purchaser and Wagner AG shall apply. In the case of series production, a certain deviation in the number of parts produced and delivered is permitted. Except where a special agreement exists in this respect, the permissible deviation is normally 10% of the quantity ordered.

15. Monitoring and Acceptance

15.1 The Purchaser assumes full responsibility for the design of the parts. The Purchaser therefore decides the functional specifications document that determines the technical specification of the parts to be produced.

15.2 If the Purchaser requires an acceptance test, the arrangements for this must be made in writing no later than at the time of order confirmation.

15.3 If the Purchaser accepts proposals from Wagner AG for improvements to the technical specification or modifications to the design of the parts, this cannot establish any transfer of liability to Wagner AG.

15.4 Unless otherwise agreed, Wagner AG will only perform a simple dimensional check of the parts based on visual inspection and random sampling.

15.5 Any sample castings must be approved by the Purchaser, who thereby authorizes commencement of series production.

16. Warranty

16.1 In the event of a complaint by the Purchaser concerning the parts delivered, Wagner AG reserves the right to investigate this on site.

16.2 The warranty provided by Wagner AG consists, by agreement with the Purchaser, in the following:

- to issue a credit note to the Purchaser for defective parts
- or to replace these
- or to repair these or have them repaired.

16.3 To avoid forfeiting the above warranty claim the Purchaser must check the supplied goods on receipt and must notify Wagner AG in writing of any defects immediately they are identified, expressly stating whether the affected parts should be replaced or repaired.

16.4 The warranty period is 12 months from the date of delivery.

17. Exclusion of further liability

17.1 All cases of breach of contract and their legal consequences and claims by the Purchaser, irrespective of the legal grounds on which they are asserted, are exclusively governed in these provisions. In particular, all claims not expressly stated for damages, deterioration, lost processing costs, cancellation of the contract or withdrawal from the contract are excluded. Under no circumstances does the Purchaser have claims for compensation for damages that do not arise from the delivery item itself (consequential damages due to defects), in particular loss of production, loss of use, direct or indirect damage, installation and removal costs and recall costs. This exclusion of liability does not apply in cases of unlawful intent or gross negligence by the supplier, but it does apply in cases of unlawful intent or gross negligence on the part of auxiliary persons. No further warranty or liability claims by the Purchaser exist.

17.2 This exclusion of liability is not valid were barred by compelling law (e.g. property liability).

18. Retention of title

If the delivery item is delivered before all amounts due from the Purchaser arising from the contract have been paid, it shall remain the property of Wagner AG until full payment is received, provided that this is permissible under the law applicable in the region in which the delivery object is located. In particular, by entering the contract the Purchaser authorizes Wagner AG to register or reserve the retention of title in public registers, books or similar at the Purchaser's expense in accordance with the applicable regional law and to fulfill all formalities in this respect.

19. Commercial Property

Orders accepted on the basis of drawings, sketches or specifications of the Purchaser are executed at the Purchaser's risk in respect of patent, design and trademark rights. The Purchaser shall hold Wagner AG harmless in all cases.

20. Applicable law, Place of jurisdiction

Contracts are governed exclusively by substantive Swiss law. The United Nations Convention on Contracts for the International Sale of Goods (known as the Vienna Convention) of April 11, 1980 is excluded.

The place of jurisdiction for all disputes between Wagner AG and the Purchaser is the head office of Wagner AG. Wagner AG also has the right to take legal action against the Purchaser at the Purchaser's head office.