

# Winterholt & Hering GmbH

Office Communication Europe

## Allgemeine Geschäftsbedingungen (AGB)

### 1. Conclusion

Our deliveries are made exclusively on the basis of these terms and conditions unless expressly otherwise agreed in writing in individual cases. Any purchasing conditions of the buyer are hereby expressly rejected. They do not apply, and we will be bound by them only in the case of the express written recognition by us of their validity. If the content of previous letters or negotiations should conflict with these GTC, the latter are decisive. Changes to these GTC to the detriment of the seller will be effective only if they have been confirmed in writing in an addendum by the seller, specifying the number and the date of the sale confirmation.

### 2. Quotations

All quotations are subject to amendment without prior notice. All agreements become effective only when confirmed in writing by us.

### 3. Shipping and transfer of risk

Shipping takes place at the expense of the buyer without liability for the choice of the means of transport. The risk of accidental loss and accidental deterioration of the goods passes to the buyer as soon as the goods have been loaded.

### 4. Packaging

The packaging is included in the purchase price and will not be taken back.

### 5. Delivery

Any delivery dates specified are non-binding. If they should be significantly exceeded, the buyer has the rights conferred on it by the law.

### 6. Prices / price changes

All prices are quoted without early payment or other discounts plus value added tax at the statutory rate. Any additional services agreed on will be charged in addition. The confirmed prices are based on the freight charges, customs duties, fees and taxes, port dues and similar price components applicable on the day of the conclusion of the contract; should any such price components increase, the seller will be entitled to pass on this increase to the buyer.

Albert-Einstein-Ring 12  
D - 25451 Quickborn / Germany  
Web: [www.whoffice.de](http://www.whoffice.de)

Tel: +49 - ( 0 ) 4106 - 7997 - 0  
Fax: +49 - ( 0 ) 4106 - 7997 - 77  
Email: [whoffice@whoffice.de](mailto:whoffice@whoffice.de)

VAT-ID: DE 811 990 090 / HRB 4057 - HR Pinneberg  
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### 7. Complaints

Any complaints in the case of obvious defects must be communicated immediately in writing, at the latest within 2 weeks of receipt of the goods, on pain of loss of warranty. Complaints regarding defects which could not be detected even after careful inspection must be communicated in writing as soon as they are identified; failure to do so will result in the loss of all rights to assert warranty claims in this regard. Even legitimate complaints do not give the buyer the right to refuse or delay acceptance of the goods.

### 8. Warranty/liability

We will either replace faulty items free of charge, issue a credit note or rectify the faults. We are free to choose between these options. If a contractual service has already been rendered with the item, this will be offset. This requires in each case a written complaint on the part of the buyer, to be submitted with a detailed description of the fault and, where appropriate, samples. The items must be returned to us free of charge. Warranty claims and complaints regarding product properties are in all cases to be addressed not to us but to the manufacturer in question. The buyer undertakes to accept and fulfil the respective warranty provisions of the individual manufacturers. The seller warrants to the buyer that the product has no special properties. Warranty obligations will lapse if the customer does not immediately notify us of the fault or if the fault has arisen in a causal relationship with the fact that

- the purchased item has been improperly treated or overloaded, or
- the item has previously been repaired by a non-qualified company or an individual without the relevant specialist knowledge, or
- parts whose use has not been approved by us have been built into the item, or the item has been altered in an unapproved manner, or
- the purchaser has failed to follow instructions concerning the treatment, care, and maintenance of the item.

Normal wear and tear is excluded from the warranty. Obvious faults are to be communicated in writing immediately after performance, in particular after delivery; it is hereby agreed that failure of the purchaser to do so will result in its exclusion. The same applies mutatis mutandis to shipping damage. This must be reported immediately by the purchaser to the carrier and/or freight forwarder and noted in writing on the consignment note. Orders for items that we do not carry in our range cannot be cancelled.

### 9. Payment

Payment is due net immediately as of the invoice date. Cheques will be accepted in payment only if these papers have been definitively redeemed. Discounts and expenses are to be borne by the buyer and are payable immediately. The amounts paid will in each case be offset against the oldest receivable. Any set-off by the buyer against any claims other than those which are undisputed or have been upheld by declaratory judgement is

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excluded. The assertion of a commercial right of retention by the buyer is excluded, as is the exercise of any other right of retention which is not based on the same contractual relationship.

In the event of default in payment, the seller will, regardless of the other rights, in particular those from section 326 of the German Civil Code (BGB), be entitled to claim reimbursement for any damage incurred by the default in payment; it will at least, however, be entitled to claim interest at a rate of 4% above the discount rate of the German Bundesbank in effect at the time. This applies also in the case of a deferral.

### 10. Reservation of title

#### 10.1. Simple retention of title (Open account / balance clause (business connection clause))

The seller retains title to the goods until such time as all claims of the seller against the buyer from the business relationship, including future receivables from contracts concluded at the same time or later, have been settled. This will apply also if all or individual accounts receivable of the seller have been aggregated in one outstanding invoice and any payments offset against it, provided that the buyer acknowledges this outstanding invoice.

#### 10.2. Extended retention of title in the case of resale with advance assignment clause

The buyer will be entitled to resell the goods subject to retention of title in the ordinary course of business only if it hereby assigns to the seller here and now all receivables which arise from the resale to customers or third parties. If goods subject to retention of title are sold unprocessed or after processing or combination with items that are exclusively the property of the buyer, the buyer here and now assigns in full to the seller the receivables arising from the resale. If goods subject to retention of title are sold by the buyer - after processing or combination - with goods that are not the property of the seller, the buyer here and now assigns any receivables resulting from the resale in the amount of the value of the goods subject to retention of title with all ancillary rights and priority ahead of the rest. The seller hereby accepts this assignment. The buyer remains authorised to collect these accounts receivable after the assignment. The seller's authority to collect the receivables itself remains unaffected; however, the seller undertakes not to collect the receivables as long as the buyer duly meets its payment and other obligations. The seller can require the buyer to give it details of the assigned receivables and associated debtors, provide all the information required to collect them, hand over the associated documentation and inform the debtors of the assignment.

#### 10.3. Extended retention of title with processing clause

Any reworking or processing of the goods subject to retention of title undertaken by the buyer for the seller will not result in any obligations for the latter. In the event of the processing, combination, mixing or blending of the goods subject to retention of title with other goods which are not the property of the seller, the seller will be entitled to co-ownership of the new item in proportion to the ratio of the value of the goods subject to retention of title to that of the other processed goods at the time of processing, combination, mixing or blending. If the buyer should acquire sole ownership of the new item, the contracting parties hereby agree that the buyer will grant the seller co-ownership of the new item in proportion to the share in the value thereof of the processed or combined, mixed or blended goods subject to retention of title and keep it free of charge to the seller.

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### 10.4. Cheque/bill of exchange clause

Should a liability to accept a bill of exchange be established on the part of the seller in connection with the payment of the purchase price by the buyer, the reservation of title and the account receivable from the delivery of goods on which it is based will not lapse before the buyer as drawee has redeemed the bill of exchange.

### 10.5. Overcollateralisation clause

If the value of the existing securities should exceed the value of the receivables to be secured by more than (here the percentage margin in the industry in question, which may not exceed 20%, would be inserted), the seller is at the request of the buyer obliged to release them to this extent.

### 10.6. Surrender of the goods subject to retention of title

The seller is entitled at any time to require the surrender of the items which belong to it, in particular to assert its rights to separate satisfaction or assignment of the claim to service in return in bankruptcy proceedings if the settlement of its receivables is placed at risk by the buyer, in particular if insolvency proceedings are instigated in respect of the latter's assets or if the latter's asset position should significantly deteriorate. The assertion of the right of retention and seizures of goods by the seller do not constitute the withdrawal of the latter from the contract.

### 10.7. Interventions by third parties in the goods subject to retention of title

In the case of seizures and confiscation of the goods subject to retention of title or other dispositions over or interference in the rights of the seller by third parties, the buyer must inform it without undue delay and cooperate with it to do everything necessary to avert the risk. As far as is appropriate for the protection of the goods subject to retention of title, the buyer must on request of the seller assign claims to the latter. The buyer must compensate the seller for all damage and costs - including court and attorney's fees - incurred by the latter as a result of intervention measures taken against encroachments by third parties.

## 11. Use of Data / Privacy Policy

With regard to the privacy policy, please refer to the following page:

[https://www.whoffice.de/inhalt.whoffice.en/medium.inhalt\\_datenschutz](https://www.whoffice.de/inhalt.whoffice.en/medium.inhalt_datenschutz)

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### 12. Place of fulfilment and place of jurisdiction

The place of fulfilment for the mutual obligations is the location of the seller. The place of jurisdiction, also for litigation in respect of cheques, is Pinneberg. The agreement is subject to the law of the Federal Republic of Germany. The standard UN Convention on Contracts for the International Sale of Goods (CISG) does not apply.

### 13. Adaptation

Should individual provisions be or become ineffective, either in whole or in part, the effectiveness of the remaining provisions will be unaffected. The parties will instead work together to replace the invalid provision which a legally permissible and effective provision that is suitable to achieve the success intended with the ineffective provision. The same applies to the making good of omissions in the contract.

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