

# General terms and conditions of supply, delivery and payment

weinor GmbH & Co., registered offices: Cologne, Germany; registered with the Commercial Register of Cologne under the number HRA 5676; individually liable partner: weinor Beteiligungs-GmbH, registered offices: Cologne, Germany. Registered with the Commercial Register of Cologne under the number HRB 4661, Managing Director: Thilo Weierman.

## 1. Scope of application

- 1.1. Our general terms and conditions of supply, delivery and payment (Terms and Conditions of Business) apply exclusively to all contractual relations involving weinor and a business (customer). No terms and conditions which contradict our Terms and Conditions of Business, or any terms and conditions of the customer which deviate from the same, shall be accepted unless expressly confirmed by us in text/written form at a minimum. Our Terms and Conditions of Business also apply should we deliver to the customer knowing that the customer's Terms and Conditions of Business differ from our own.
- 1.2. All agreements reached between ourselves and the customer aimed at fulfilling the contract drawn up between the contracting parties are to be recorded in this contract in text form at a minimum.
- 1.3. In addition to these Terms and Conditions of Business, both the guideline for assessing fabricated awning fabrics issued by the Industry Association for Roller Shutter, Sun Protection, Automation (IVRSA), as amended from time to time, and the awning fabric information provided by manufacturers, excerpts of which are printed in the price list made available prior to the conclusion of the contract, shall also apply.

## 2. Offer, order confirmation and conclusion of contract

- 2.1. Our offers and all details given in price lists, brochures, on websites, etc. are to be understood as being without commitment unless otherwise expressly stated in the order confirmation.
- 2.2. The customer shall be required to indicate, in good time, prior to concluding the contract, in text form at a minimum, any specific demands required of our products. However, our obligations and liability shall not be extended as a result of such indicated demands.
- 2.3. The customer's order shall represent a binding offer which we may accept in the space of two (2) weeks of its receipt by sending a written order confirmation or, in the case of orders for awning fabrics, by supplying the goods, insofar as our customer does not specify a longer term of acceptance.
- 2.4. The customer is obliged to check our order confirmation for completeness and correctness. If the customer remains silent in the absence of agreement between the order and the order confirmation, the contract shall be concluded on the basis of our order confirmation if the contract is a commercial transaction for both parties.
- 2.5. None of the customer's rights arising from the contract are transferable.

## 3. Prices

- 3.1. Unless otherwise provided for in the order confirmation, our prices shall be based on the price lists valid on the day of the order confirmation.
- 3.2. Our prices are ex works and do not include the cost of freight, postage, packaging, insurance or any other shipping costs.
- 3.3. Our prices are exclusive of value-added tax at the current rate; this is to be paid at the rate applicable on the day of invoicing and will be shown in the invoice separately.

## 4. Terms of payment and failure to pay, payment in advance/collateral, amendment to terms and conditions due to force majeure, compensation and possessory lien

- 4.1. Payments for orders placed over the phone, by fax, e-mail or through the post which are settled in the space of 3 days using a SEPA Business-to-Business Direct Debit Mandate shall be subject to a 4% cash discount. The deadline for the pre-notification is hereby shortened to 2 days. Any costs incurred due to the mandate being reversed or not being honoured shall be borne by

the customer provided that the reversal or failure to honour the mandate was not caused by ourselves. Payments effected within 10 days of date of invoice shall be subject to a 3% discount. Orders placed via the e-shop are subject to a 5% discount provided that payment is settled within 3 days using a SEPA Business-to-Business Direct Debit Mandate; a 4% discount shall apply to payments made within 10 days using a SEPA Business-to-Business Direct Debit Mandate. The terms and conditions agreed above for the pre-notification deadline and the costs for not honouring the mandate shall apply accordingly. Invoices settled after the initial 10 days from date of invoice and within the period stated on the invoice are to be paid net and in full within 30 days of the date of invoice. If a SEPA Business-to-Business Direct Debit Mandate is issued but is reversed or not honoured for reasons beyond our control, the corresponding invoice amount shall become due with immediate effect.

- 4.2. Should the deadline for payment be exceeded, we shall be entitled to charge interest on arrears amounting to 9 percent per annum. The customer shall be entitled to prove that, in individual cases, either no loss or damage or a lower loss or damage has occurred. In the case of payment default, we shall not be obliged to accept orders from the customer. We shall be entitled to require payment in advance or collateral before carrying out pending deliveries. This not only applies in the event of payment default but also if there is a significant deterioration or considerable risk in the customer's financial circumstances so that the demand for payment of the purchase price is at risk due to the customer's lack of financial capacity. A lack of financial capacity must be assumed, among other things, if there is sufficient information from a credit insurer or credit agency (e.g. credit reform). Payment in advance and collateral can also be demanded if enforcement proceedings have already been initiated against the customer.
- 4.3. In the event of force majeure, we shall be entitled to amend our terms of payment for newly placed orders and only to execute deliveries either against payment in advance or against collateral equivalent to the order amount. This shall not apply to customers with credit insurance or for orders already confirmed under the terms and conditions applicable at the time. Force majeure is defined as any occurrence of an unavoidable or unforeseen external event causing disruption to the contract that is significant in scope and beyond the control of the contracting parties, and that also cannot be avoided or rendered harmless through the exercise of extremely reasonable care. Examples include, but are not limited to, strikes, lockouts, government interventions, pandemics or epidemics, natural disasters, riots or insurrections, or acts of war or terrorism that are beyond our control.
- 4.4. The customer shall only be entitled to assert a right of set-off if their counterclaims are legally adjudicated, undisputed, or have been accepted by us. The customer shall furthermore only be permitted to enforce a possessory lien if, and to the extent that, their counterclaim is founded on the same contractual relationship.
- 4.5. Should the customer fall into arrears with payments, we shall be entitled to retain up to half of the customer's valid or agreed rebates and to set these off against the most overdue payment claims in such a way that the principal claim is settled first, followed by the interest due and then the costs incurred.

## 5. Consent to electronic invoicing

We shall be entitled to issue invoices electronically. Our customer hereby expressly consents to receiving invoices electronically.

## 6. Delivery and call dates; customer's obligation to cooperate, delay in delivery or impossibility due to force majeure, partial deliveries and performance, acceptance

- 6.1. Delivery dates are only approximate dates. Agreements relating to delivery dates are not fixed delivery dates unless these have been expressly confirmed as such by us in writing. Should a fixed delivery date be agreed, no guarantees can be given as to the exact time of delivery. Delivery dates are deemed to have been met as soon as we have indicated that the consignments are ready for dispatch.
  - 6.2. Adherence to our obligation to deliver shall be subject to the customer duly meeting their obligations on time. Failure to meet the above shall result in the delivery date being extended by a reasonable amount of time.
  - 6.3. Delays in delivery at our company or our suppliers' plant which are the result of force majeure or other events beyond our control – especially strikes, lockouts, government intervention, pandemics or epidemics, natural disasters, riots or insurrections, or acts of war or acts of terror that are beyond our control – shall entitle us to postpone delivery by a reasonable amount of time or to withdraw from the contract. Should it prove impossible for us or our supplier to deliver or provide the service, both we and our supplier shall also be released from our obligation to deliver or provide the service. In the event of a delay or should it be impossible to provide the service, we shall inform the customer without delay. Any advance payments made to us by the customer shall be reimbursed in such cases.
  - 6.4. Unless otherwise agreed contractually in writing, and provided that it is reasonable for the customer, we shall be entitled to provide partial deliveries and partial performance.
  - 6.5. Call-off orders, or the specification of individual partial deliveries, are, as far as possible, to be made at equal intervals, in equal quantities, and in enough time to enable due and proper manufacture and delivery. Should the consignments not be called off or specified at all or not in good time, we shall be entitled to withdraw from the contract if the set deadline has not been met.
  - 6.6. Should a contract between us and the customer specify, in text form at a minimum, that the goods are subject to inspection under specific conditions, the acceptance of the goods shall take place at our works. All the costs relating to the acceptance – provided that these relate to the deployment of our staff, our material and our equipment – shall be borne by us, while all travel and accommodation expenses for the person in charge of acceptance shall be borne by the customer. Should the customer fail to accept the goods for reasons within his/her control or due to any fault on his/her part, the goods shall be deemed to have been supplied in the due and proper manner upon their leaving our works.
- ## 7. Transfer of risk – Shipping/packaging
- 7.1. Unless otherwise stated in the order confirmation, delivery of the goods shall be "ex works". Our works are located in Cologne and Möckern (Germany). It is also hereby expressly agreed by the two parties that the Incoterm Code EXW (2020 version) shall apply.
  - 7.2. All risks shall be transferred to the customer as soon as the goods leave our works in Cologne or Möckern. This shall equally apply when the goods are carried by our own vehicles or when we agree to take on or perform other services, most notably shipping costs or delivery. We are under no obligation to unload the goods on behalf of the customer.

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- 7.3. Should shipment or acceptance of the goods be delayed or not performed due to circumstances beyond the control of the customer, all risks shall be transferred to the customer as soon as the customer has been notified that the goods are ready for shipment and delivery. Should shipment be delayed due to or at the request of the customer, we shall store the goods at the expense and risk of the customer. In this instance, notification that the goods are ready for shipment shall be equivalent to having shipped the goods.
- 7.4. Should we consent to the goods being returned, the customer shall bear all risks until the goods reach our works.
- 7.5. Should the customer request a specific form of packaging, we accept no liability for the suitability of such packaging for the chosen method of delivery.
- 7.6. We will accept the return of transport and all other packaging materials, as defined under the packaging regulations at the place of performance, to our works (Cologne and Möckern), after use at no charge if no other arrangements have been made. The transport costs for the return transport of the used packaging and other packaging materials to our works in Cologne and Möckern shall be borne by the customer. Lattice boxes and pallets are our property and will be taken back by us at the delivery location.
- 7.7. On request, we will obtain transportation insurance, at the customer's expense, to cover the consignment.
- 8. Retention of title and retention of title safeguard clause**
- 8.1. All the deliveries made by us are subject to retention of title. The property shall not pass on to the customer until the complete settlement of all open demands resulting from the mutual business relationship including interest and costs.
- 8.2. Should the goods subject to retention of title be attached to any real estate by the customer to the extent that they become an integral part of the property, the customer hereby transfers to us the corresponding, highest priority part of the claims against his client and/or the building owner together with all ancillary rights in the amount of all monies owed to us by the customer. In the event of resale, the customer shall transfer to us his/her claims against the purchaser for the same amount.
- 8.3. In the course of normal business, the customer shall, however, be entitled to dispose of the goods subject to retention of title and to collect the purchase price. Said entitlement shall expire, should the customer be in arrears with payments to us. In this instance, we shall be entitled to collect all the items we have already delivered. The customer hereby consents to our taking such action. The customer shall not be entitled to pledge or to assign by way of security the goods subject to retention of title. Should the goods subject to retention of title be pledged or our rights encroached upon by any other form of third-party action, the customer must inform us without delay by registered mail. Any costs incurred by us as a result of our suffering enforcement or other prejudices shall be reimbursed by the customer.
- 8.4. The customer undertakes to obtain adequate insurance cover for the goods subject to retention of title. The customer hereby transfers to us any claims arising from such insurance.
- 8.5. At the request of the ordering party, we undertake to release any securities to which we are entitled, provided the current value of our securities exceeds the claims which are to be secured by more than 10%. The decision on which securities are to be released shall be at our sole discretion.
- 9. Assembly, assembly instructions and base/awnings and wind class, snow loads, filiform corrosion and preanodisation**
- 9.1. Unless otherwise agreed in text form at a minimum, the assembly of the supplied goods shall not form part of the contract with the customer. The assembly work is to be carried out by our customer at his/her own risk. On request, we shall also assist our customer through training courses or other assistance. The provision of such assistance shall not imply any changes to the customer's obligation to carry out the assembly work him/herself.
- 9.2. Our assembly instructions and our verbal or written advice on using our products are intended to provide the customer with information on the best possible use of our products and services. They are not intended to release the customer from his/her duty of due diligence to ascertain whether our goods and services are suitable for the intended purpose. This applies especially to information about the design and quantity of the required brackets and testing the load bearing capacity, as well as the nature of the assembly base, and the disclosure of such information to us when placing the order. Should the customer not provide any details about the brackets or the assembly base when placing his/her order, we shall supply brackets of a design and in a quantity suitable for installation on concrete with a covering of up to 20 cm (non-pressure-resistant base) for wind resistance category 2. Consequently, should it not be possible to use the product as set out in the agreement because of inadequate or inaccurate information being provided by the customer, we shall only be liable should we or our employees have acted with intent or gross negligence.
- 9.3. Given the complexity of the interaction between building materials, tools and fastening elements, we recommend that customers inform and assure themselves of the specific building conditions, especially static conditions, at the site in question. This applies especially to testing the load bearing capacity and the nature of the assembly base. Since we never carry out any installation work for the customer and only supply the goods to a customer's order, we accept no liability in this regard.
- 9.4. Our awnings comply with the requirements of the agreed wind resistance category 2. This presupposes that the awning is installed by our customer in a proper manner and, in all other respects, free from any technical defects. It furthermore presupposes that the awning is installed using the type and quantity of brackets recommended by us, that the strength of the dowels prescribed by us has been taken into account during the installation work and that the manufacturer's instructions concerning dowels are followed during assembly.
- 9.5. Responsibility for personally verifying snow loads and the various snow load zones – depending on the place of assembly and installation – as well as the valid national and international standards including, but not limited to, in particular Austria and regions where heavy snowfalls are commonplace, rests with the customer, as we are typically unaware of the place of assembly and installation and use. The customer bears the risk of suitability and use. In addition to the above, reference is hereby made to the price list, along with references to structural analyses and snow loads.
- 9.6. Unless otherwise agreed at least in text form, awnings supplied by us are intended for installation with an inspection/control device that is externally accessible according to their type and intended use. If the installation in the façade is carried out in such a way that an inspection from the outside is not possible, we shall not be liable in the case of a defect to the awning for the costs associated with the opening and closing of the façade in connection with the rectification of the defect in the awning supplied. This also applies to the occurrence of a warranty case. The customer must inform its end customer of the necessity of providing external access for inspection/control purposes.
- 9.7. Important information on filiform corrosion (= growth of traces of fibrous corrosion under painted surfaces which, under certain conditions, may be brought about by the moisture and electrolyte content in the atmosphere, e.g. in coastal areas): The customer is hereby advised that, based on the best available technology, filiform corrosion in powder-coated aluminium parts/other painted components can only be reduced if the long sections have undergone an anodisation process. This does not apply to small parts. The pre-anodisation does not mean that the inspection of whether our product is resistant to a maritime climate can be dispensed with. This also applies to excessive sanding. The utilisation risk shall be borne by the customer.
- 10. Warranty/obligation of inspection and of notification of defects in writing/compensation for damage**
- 10.1. Variations in colour, design, etc. which are customary in this line of business and trade are not defects. The same applies to deviations in our products from samples or patterns unless otherwise expressly agreed in text form at a minimum. We warrant that the products are free from manufacturing defects and defects in the material and that any assembly work insofar as it is, in exceptional cases, carried out by ourselves or by a company engaged by us, shall be carried out properly. However, we do not warrant that the design and make-up of the ordered items comply with the provisions under public law for the intended purpose.
- 10.2. Upon delivery, the goods are to be inspected immediately to ensure that they are as ordered and free from defects. Such inspections must be carried out, at the latest, on our customer's premises. Should the customer arrange for delivery to be made to a third-party location, e.g. the customer's home, all risks arising from direct delivery shall pass to the customer as soon as the consignment has left the supplier's works. Notices of defects must be reported to us without delay, in text form at a minimum, and received by us no later than eight (8) days after delivery. Hidden defects and/or defects which only appear during the period of guarantee shall be subject to the same procedure and period of notice. The period of notice shall commence on the day that the defect materialises. Failure on the part of the customer to comply with the obligation to inspect and to lodge a complaint concerning faults or defects shall invalidate the warranty. The goods shall be deemed to have been approved. This shall not apply in the event of any wilful, grossly negligent or malicious acts on our part, in the event of injury to life, limb or health, or in the event of any guarantee of conformity or procurement risks assumed pursuant to Section 276 BGB (German Civil Code), or in the event of any other cases of liability mandated by law.
- 10.3. Provided that the customer has fulfilled his/her obligation to inspect and lodge a complaint concerning faults or defects, as set out in Article 10.2, we shall be liable for material defects as follows: Should there be a defect in the purchased item, we shall, at our discretion, be entitled to rectify the defect or to supply a fault-free product (remedy). We shall only be liable if the defect is substantial. Should either or both types of remedy be impossible or unreasonable, we shall be entitled to refuse to provide a remedy. We shall also be entitled to refuse to provide a remedy so long as the customer fails to make payments corresponding to the fault-free portion of the service. Should remedy be impossible or ineffective, the customer has the option of reducing the purchase price to an appropriate level or of withdrawing from the agreement as provided for in law.
- 10.4. Notwithstanding any agreements to the contrary below, no other customer claims shall be accepted irrespective of the legal basis (especially claims for damages arising from an infringement of ancillary obligations under the contract; unlawful acts, or any other tortious liability and claims for reimbursement of expenses, with the exception of those set out in Sect. 439 Para. 2

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BGB (German Civil Code)). This applies especially to claims for damages not directly related to the purchased item as well as to claims for damages for loss of income. Liability in the event of careless infringement of a material contractual obligation (cardinal obligation) shall be limited to the amount of foreseeable damage typical for the contract in question. Furthermore, we shall be liable in accordance with the statutory provisions to the extent that the customer should claim for any damages which are based on wilful intent or gross negligence on our part, including wilful intent or gross negligence on the part of our representatives or agents. Liability for culpable loss of life, limb or health shall remain unaffected; this shall also apply to any mandatory liability arising from the product liability law. The above shall also apply to the reimbursement of expenses. The exclusion of liability shall equally not apply to any assumed guarantees or any guaranteed characteristics should a defect covered by either of these give rise to a claim for which we are liable. All claims resulting from recourse against the manufacturer or the supplier shall also remain unaffected.

10.5. No liability is accepted for damage occurring due to any of the following reasons: unsuitable or improper usage; faulty assembly by the customer or a third party; non-adherence to our operating and service instructions; arbitrary changes to the products; replacement of parts or use of consumables not in compliance with the original specifications; replacement of materials; normal wear and tear; filiform corrosion, to the extent that we had not been asked to pre-anodise the parts in question or done so; faulty or negligent operation; inappropriate fuels; inadequate construction work; unsuitable base; chemical, electro-chemical or electrical factors insofar as these are beyond our control; improper adjustment or corrective maintenance work carried out by the customer or a third party without our prior consent.

## 11. Limitation period

The limitation period for claims based on defects shall be 24 months from the transfer of risk. In all other respects the warranty is based on legal requirements with the following exceptions: the customer's claims for compensation for damages can only be asserted within a preclusion period of one year as of the start of the statutory period of limitation. This does not apply if we are guilty of culpable intent or gross negligence, for claims due to injury to life, limb or health as well as in the case of a claim that is based on a tortious act or an explicit warranty promise or the acceptance of a procurement risk acc. to Section 276 BGB (German Civil Code), or in the event that a mandatory statutory longer limitation period applies.

## 12. Patents

Should a third party assert a claim against the customer or should the customer him/herself assert an infringement claim concerning his/her industrial property rights regarding the supplied products, the customer undertakes to inform us of this without delay in text form at a minimum. We shall be entitled but not obliged to conduct, at our own expense, all negotiations relating to an out-of-court or court settlement and/or legal action covering the infringement of industrial property rights relating to the delivered products. The customer shall be obliged to assist us and to transfer the relevant powers of attorney. No liability for damage arising from infringements of patents shall be accepted.

## 13. Images, photographs, drawings

13.1. If and to the extent that we provide a customer with images, photographs, films, drawings, or similar depictions, especially those transmitted electronically as digital data, and this customer then uses them on the internet, in social media, on YouTube or in leaflets, brochures, exterior signage or

on vehicles or similar advertising media, for example, the customer undertakes to indicate the origin/authorship of such images, photographs, films or drawings, or similar depictions, e.g. by adding the weinor watermark or a remark under or over the image such as "Copyright weinor" or the corresponding symbol © in conjunction with the company name weinor. If we have included a year, this must also be added after the reference to our copyright. The watermark (weinor) may not be cropped or masked or otherwise made unrecognisable. If we provide images, photographs, films or drawings to which we do not own the copyright but merely the rights of use, we shall make this known to the customer. The use of such items shall be at our customer's risk.

13.2. The images, photographs, films, drawings, or similar depictions to which we own the copyright shall remain our property. Such materials will only be provided to the customer on a loan basis and may only be duplicated, reproduced, copied, stored or passed on to third parties as part of the business relations with weinor and for the purpose of advertising our products in the corresponding manner. The images, photographs, drawings or the content of such items may not be edited or otherwise amended – whether through photocomposition, montages, electronic tools or any other forms – without our written consent. This especially applies to digital graphical materials. The copying or redrawing, reconstruction or retaking of photographs is equally not permitted without our written consent. The same requirements and obligation for consent apply to images, photographs, films, drawings, or similar depictions which weinor only has the rights of use to.

13.3. If and to the extent that the customer provides us with images, photographs, films, drawings, or similar depictions, the customer hereby warrants that no third-party copyrights and/or rights of use to such images, photographs, films, drawings, or similar depictions are affected in any way. The customer hereby releases us from any and all costs and damage claims which may arise due to an infringement of copyrights and/or rights of use to the images, photographs, films, drawings, or similar depictions which the customer provides.

13.4. The provisions cited in Articles 13.1. and 13.2. above shall equally apply if images, photographs, films, drawings, or similar depictions are used by the customer's agency.

## 14. Data protection

We take the protection of our customers' personal data very seriously. These data are stored and processed with the specific aim of fulfilling our contracts and processing orders in compliance with the valid data protection provisions as well as all other pertinent statutory regulations. Data concerning customers will not be forwarded to third parties without their consent or unless so required by law or for fulfilling the contract or processing orders. As the "controller", we are responsible for the processing of data within the meaning of the General Data Protection Regulation. Further details on our privacy policy can be found at [www.weinor.com/data-protection](http://www.weinor.com/data-protection), which is also available to our customers as a hardcopy on request/inquiry.

## 15. Place of fulfilment/court of jurisdiction/choice of law

15.1. Unless otherwise provided for under this contract, the place of fulfilment and payment shall be our registered offices in Cologne, Germany.

15.2. If the customer is a business person, the court of jurisdiction shall be our registered offices in Cologne, Germany.

15.3. The laws of the Federal Republic of Germany shall apply, to the exclusion of the EU Sales Convention.

## 16. Brexit clause

In respect of our customers affected by Brexit, we hereby point out that our exist-

ing business relationship was founded on the United Kingdom (hereinafter referred to as the UK) being a member of the European Union. With its withdrawal from the European Union and the transition period ending on December 31.12.2020, the UK has left not only the single market but also the Customs Union.

In the event that a UK withdrawal should significantly impact our business relationship, in particular in respect of the terms and conditions of pricing and delivery, e.g. import duties and taxes, the terms and conditions of contract in effect at that time may need to be adjusted. Our obligation to deliver shall be deemed fulfilled once the merchandise is made available for collection from our factories. The EXW Incoterm code defined in Article 7.1. of these terms and conditions has been agreed by the parties hereto.

Prices and terms of delivery will be subject to renegotiation for all contracts and/or orders occurring as of the withdrawal coming into effect and the transition period ending.

## 17. Final provisions

Any amendments and additions to these terms and conditions and the contract concluded between the contracting parties shall only apply if made in text form at a minimum. These new general terms and conditions of supply, delivery and payment supersede all previous versions.

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