# General Conditions of Sale and Delivery
# WATERKOTTE GmbH, Bochum

GCSD 01052024

## I. Scope of the terms and conditions

1) Only these terms and conditions shall apply to all goods sold, services performed and offers made by us. Accordingly, they shall also apply to all future business relationships, even if not expressly agreed again. These terms and conditions are deemed accepted at the latest upon receipt of the merchandise or service. Counter confirmations by the other contracting party (i.e. the buyer, customer, etc.) referring to that party's terms and conditions are herewith opposed; such third-party terms and conditions and agreements which accompany them shall take effect only when confirmed by us in writing.
2) All agreements made between us and the other contracting party for the purpose of performing this contract shall be put down in writing in this contract.

## II. Offer and conclusion of contract

1) Our offers are without obligation and not binding. Declarations of acceptance and all purchase orders need our confirmation in writing or by fax or telex in order to be effective.
2) Any information, drawings, figures, technical data, descriptions of the weight, dimensions and performance contained in brochures, catalogues, circular letters, advertisements, price lists or the documents being part of the offer are not binding, unless we expressly state that they shall be binding when confirming the order. We reserve the copyright of any plans, drawings, cost estimates and other documents; these documents may not be disclosed to third parties without our express written consent. On the other hand, we shall not disclose to third parties without the other contracting party's consent any plans identified as confidential by the other contracting party.
3) We reserve the right to make changes to the goods or service to the extent that these changes are acceptable for the other contracting party.
4) Verbal agreements before, during or after conclusion of the contract, in particular subsequent amendments and supplements to these General Conditions of sale and delivery - including this written form clause - as well as collateral agreements of any kind, shall require written confirmation from Waterkotte in order to be valid.

## III. Prices

1) Unless stated otherwise, the prices quoted in our offers shall be binding for us for 30 days from the date of each offer. In all other respects, the prices quoted in our confirmation of the purchase order plus the current statutory sales tax shall apply. Prices shall be established in accordance with the terms of the price lists applicable on the day of delivery, unless we expressly quoted a fixed price.
2) Additional goods and services shall be invoiced separately. Unless agreed otherwise, prices are ex works plus packaging, freight and value-added tax.
3) In the absence of any specific agreement, packaging, shipping route and means of transportation shall be left to our discretion.
4) If a discount for cash payment is agreed, the other contracting party shall be entitled to the discount only if all previously outstanding accounts have been settled in full.

## IV. Time of delivery and performance

1) Dates or periods of delivery, whether agreed as binding or non-binding, must be equally in writing.
2) Periods and dates of delivery are approximate, unless we specified them in writing and expressly as binding.
3) Periods of delivery shall start from the date we confirm the purchase order, but not before all details of execution are straightened out, and are understood ex place of delivery. In case of sales ex works, notification that goods are ready for shipment shall be deemed respecting the periods and dates of delivery if goods cannot be shipped in time without any fault on our part. Periods of delivery shall be extended by the period by which the customer is late in fulfilling his obligations arising from this contract or other business done with us. This shall also apply to any documents, permits, releases to be provided or any down payments or any cash in advance / prepayment to be made by the other contracting partner. The above shall apply mutatis mutandis to the dates of delivery.
4) Even if periods and dates of delivery were agreed as binding, we shall not be responsible for delays in delivery and performance brought about by force majeure and events which make delivery very difficult or impossible for us and not just temporarily - including but not limited to strike, lock-out, orders by the authorities, etc., even when they occur with our suppliers or their subcontractors. Such events shall entitle us to postpone delivery and/or performance by the duration of the impediment plus an adequate lead time, or to withdraw in whole or in part from the contract for the portion yet to be performed.
5) If the impediment lasts more than three months, the other contracting party, after granting an adequate extension of the original period, shall have the right to withdraw from the contract with respect to the portion yet to be performed. The notice of withdrawal from the contract must be given in writing immediately after occurrence of the event entitling to the withdrawal. The other contracting party may not base claims for damages against us on the fact that the period of delivery was extended or that we were released from our obligation. We, for our part, may invoke these facts only if we promptly notify the other contracting party.
6) To the extent that we are responsible for not respecting periods and dates which we agreed as binding, or that we are late, the other contracting party shall be entitled to a compensation for delay in the amount of ½ % for each full week of delay, but no more than a total of up to 5 % of the invoiced value of the goods and services which were late. Claims exceeding this amount shall be excluded, unless the delay was caused by at least gross negligence on our part.
7) We shall have the right to make partial deliveries or provide partial services at any time, unless partial delivery or partial service is of no interest to the other contracting party.
8) The fulfilment of our obligations to provide goods and services requires that the other contracting party fulfil its obligations in a timely and appropriate manner.
9) If the other contracting party is in default of acceptance, we may claim compensation for any loss we incur; upon default of acceptance, the risk of deterioration or of accidental loss shall pass to the other contracting party.

## V. Passage of Risk

1) Risk shall pass to the other contracting party upon handing over the shipment to the person carrying out the transport or when the shipment left our warehouse in order to be shipped. If shipping is delayed because of the other party's wishes, the risk shall pass to that party with the notification that the goods are ready for shipment.
2) Unless otherwise agreed, the delivery or provision of the service shall be EX WORKS (EXW) in accordance with INCOTERMS 2020.

## VI. Warranty

1) We warrant that our products are free of manufacturing defects and faulty material; the warranty period is two years from delivery of the products.
2) If our products are installed or repaired in combination with products of other manufacturers that are not expressly approved by WATERKOTTE, any warranty will be void.
3) If our operating, maintenance and installation instructions are not followed, if changes are made to the products, if parts are exchanged, or if consumables are used that do not conform to the original specifications, the any warranty will be void if the other party to the contract does not refute a corresponding substantiated claim that one of these circumstances caused the defect.

a) In this context, particular attention must be paid to the following (for details please refer to our operating, maintenance and installation instructions): Our heat pumps, which are supplied as heat generators, have certain requirements in terms of operation and the related system. This concerns primarily the heat intake and the heat source. The heat intake, i.e., in general, the heating system and/or hot-water system, requires an appropriate and correct design with respect to flow temperature and return temperature or mass flow rate as well as its operation and control. The heat source and the heat source system require adjustment to the heat pump in terms of performance in conjunction with sufficient and uninterrupted supply of the heat pump from the heat source, taking account specifically of the mass flow rate and the type of the liquid used. In case of water, precautions must be taken with respect to corrosion, pollution and uninterrupted as well as sufficient water supply of the heat pump. In this connection, supply must be guaranteed by monitoring the volumetric current by a shut-off signal integrated into the safety chain. The heat pump must be put into service by a specialist authorised by us and by the other contracting party, or by us, and this process must be recorded appropriately and by using our certificate of acceptance (which must be completely filled in and signed). The specified instructions regarding operation, service, checking and maintenance must be followed, in particular after 100 hours of operation after commissioning

and then in regular one-year intervals, beginning at the latest 1 year after commissioning.

b) A warranty for excessive and unusual use over and above an annual operating time of the heat pump with Fix Speed compressors of more than 2,200 hours is excluded if the defect is attributable to exceeding this operating time.

c) Defects due to outside influences are not manufacturing defects and we shall not be responsible for them. Such defects include but are not limited to over-voltage on electric and electronic elements caused, e.g., by lightning or other events, pollution and corrosion caused by other parts of the system not belonging to our products, as well as operation with lack of water.

d) For heat pumps with flammable refrigerants, in particular of safety classes A2L and A3, the safety specifications and installation requirements must be observed and documented in accordance with the planning and installation instructions.

4) Any defects must be reported in writing to our customer service management without delay, but not later than within one week from the receipt of the goods. Any defects, which even with careful inspection cannot be detected within this period, must be reported to us in writing without delay upon their discovery; please note that under section 377 German Commercial Code you have a duty to inspect the goods and make a complaint about any defect immediately on receipt of the goods. If we are not promptly given the opportunity to satisfy ourselves that the defect exists, in particular if the rejected goods or samples thereof are not made available to us without delay, all claims based on defects shall be voided.

5) If the other contracting party notifies us that our products are not as warranted, we may demand at our option and at our expense that:

a) the defective part and/or device be returned to us for repair or a replacement without defect to be then sent back to the other contracting party;

b) the other contracting party keep the defective part and/or device available and we shall send a service technician to the other party in order to make the repair. If the warranty work is to be performed at a place other then the place of residence/seat of the contracting party, or if this work is done at the other contracting party's request at a place designated by that party, we shall not invoice the contracting party for the parts under warranty, while the other contracting party will have to pay us for the hours of labour and the travel cost which we will invoice at our standard rates.

6) If the repair fails after an adequate period of time, the other contracting party may, at its option, demand a reduction of the remuneration or rescission of the contract.

7) Liability for normal wear is excluded.

8) As to goods which were sold as degraded material or used goods and materials, it is understood that any warranty for defects is excluded.

9) Claims based on warranty may be made only by the other contracting party and may not be assigned.

## VII. Retention of title

1) Until the discharge of all claims (including all current account balances) against the other contracting party, to which we are entitled now or in the future on any legal ground, we shall be granted the following securities which we will release upon request at our option if their value persistently exceeds our claims by more than 20 %.

2) The goods shall remain our property. Any processing or transformation shall always be undertaken on our behalf as a manufacturer, without this imposing any obligation on us. If our (co-)ownership lapses due to combination, it is hereby already agreed that our (co-)ownership of the uniform object shall pass to us based on its prorated value (invoice value). The other contracting party shall store the goods to which we hold (co-)title free of charge. Goods to which we hold (co-)title are referred to hereinafter as goods delivered under retention of title.

3) The other contracting party shall be entitled to process and to sell the goods delivered under retention of title in the regular course of business as long as that party is not in default. Pledging or transferring such goods by way of security is not permissible. The other contracting party as of now fully assigns to us as a security any claims (including all current account balances) resulting from the resale or from any other legal ground (insurance, tort) relating to the goods delivered under retention of title. We revocably authorise the other contracting party to collect the claims assigned to us for its account in its own name. This collection authorisation can only be revoked if the other contracting party does not duly meet its payment obligations.

4) If goods delivered under retention of title are seized, and in particular attached, by third parties, the other contracting party shall point out that they are our property and notify us immediately so that we can enforce our property rights. To the extent that the third party is not in a position to refund us the court or out of court costs incurred by us in this connection, the other contracting party shall be liable for those costs.

5) If the other contracting party breaches the contract in particular, is in default with payment, we shall be entitled to rescind the contract and to demand that the goods delivered under retention of title be returned.

## VIII. Payment

1) Unless agreed otherwise, our invoices shall be due immediately and payable without any deduction. Despite provisions to the contrary of the other contracting party, we shall be entitled to apply its payments first to its older debts, and in doing so we will inform the other party of the type of offsetting used. If costs and interest payments were already incurred by us, we shall be entitled to apply the payment first to the costs, then to the interest payments, and at last to the main debt.

2) Any payment shall be deemed effected only when the amount is available to us. In the case of cheques, payment shall be deemed effected when the cheque is cashed.

3) If the other contracting party is in default, we shall be entitled to demand from the point in time concerned interest in the amount of 8 percentage points above the base rate as flat-rate damages. The interests shall be lowered if the other contracting party proves that the burden is lower; it shall be permissible for us to prove that the damage is higher.

4) If we become aware of any circumstances which may put into question the creditworthiness of the other contracting party, including but not limited to non-payment of a check deposited by it or if it stops payment, or if we become aware of other circumstances which put into question the creditworthiness of the other contracting party, we shall be entitled to make any remaining debt payable in full, even if he have accepted cheques. In this case we shall also be entitled to demand prepayment or provision of security; this shall apply notwithstanding any previously made agreements regarding prepayment and cash in advance.

5) Even if making claims based on defects or counterclaims, the other contracting party shall be entitled to offsetting, retention of goods or reduction of the purchase price only if the counterclaims have been recognized by declaratory judgment or are undisputed. However, the other contracting party shall also be entitled to retention of goods on the basis of counterclaims arising from the same contractual relationship.

## IX. Design changes

1) We reserve the right to make design changes at any time without being obligated to make such changes also to products which have already been delivered.

## X. Liability

1) Claims for damages against us for whatever type of violation of duty are excluded, except in the event of intent or gross negligence.

2) In case of violation of major duties under the contract, we shall be liable for any negligence, but only up to the amount of the foreseeable damage. Claims for lost profits, for expenses saved, claims for damages brought by third parties as well as claims based on other indirect or consequential damage may not be asserted, unless a characteristic warranted by us had the purpose of protecting the other contracting party from such damages.

3) The preceding limitations and exclusions of liability shall not apply if and to the extent that mandatory statutory provisions (such as under section 444 German Civil Code, under the German Product Liability Act as well as provisions regarding damages resulting from injury to life, limb or health) provide otherwise and/or are contrary to them.

4) To the extent that our liability is excluded or limited, this shall also apply to our employees, our representatives and vicarious agents.

5) Our liability is limited to the services confirmed in our contract. Planning and planning support of any kind are not part of our services of the confirmed contracts and therefore excluded from liability.

## XI. Applicable law, venue, partial invalidity

1) The law of the Federal Republic of Germany shall apply to these terms and conditions and all the legal relationships between us and the other contracting party. The provisions of the UN Convention for the International Sale of Goods shall not apply.

2) To the extent that the other contracting party is a merchant, a legal entity under public law or a public special fund, Bochum shall be the sole venue for all disputes arising directly or indirectly from the contractual relationship. However, we shall also be entitled to bring action against the other contracting party at its seat.

3) Should any provision of these terms and conditions or any provision of other agreements be or become invalid, this shall not affect the effectiveness of all other provisions or agreements.

## XII. Returns processing in accordance with the RMA process

Waterkotte accepts returned goods, subject to revocation at any time and exclusively at its own discretion ("returns") by the customer in accordance with the following Criteria:

1) A return of the respective goods shall only be possible for spare parts up to a maximum of three months and for goods from heat pump orders only up to six months after delivery.
2) Materials specially ordered by Waterkotte from external third parties for repairs or specific projects are excluded from return.
3) Goods with a list price of less than EUR 50, - (excl. VAT) will only be taken back if Waterkotte GmbH is in default.
4) The return must be accompanied by an enclosed RMA request authorised by Waterkotte GmbH. If this is not enclosed, we reserve the right to return the goods to the sender at the sender's expense or to dispose of them at the sender's expense.
5) The freight cost of return shipping (transport) shall be borne by the customer. Waterkotte reimburses the return shipping costs only if a default on the part of Waterkotte GmbH is the cause.
6) The returned goods must be in their original packaging, complete and undamaged; electronic parts must be in sealed original packaging. The return of damaged goods or goods that have already been installed is not admissible.

## XIII. Force majeure

Waterkotte and the Purchaser shall be released partially or fully from the duty of timely fulfilment of the contract if they are hindered from fulfilment by force majeure events. Insofar as unforeseeable or unavoidable circumstances occur that impede compliance with the agreed delivery period, the delivery period shall extend by the duration of these circumstances.
These include, in particular, pandemics, armed conflicts, authority interventions and bans, transport and customs clearance delays, transport damage, shortages of energy and raw materials, labour disputes (strikes and lockouts), and unavailability or outage of significant suppliers that are difficult to substitute.
These aforementioned circumstances shall also entitle us to extend the delivery period if they occur at Waterkotte.

## XIV. Miscellaneous

The Distributor/Purchaser/Dealer warrants that he will not sell, export or re-export, directly or indirectly, any products supplied by Waterkotte/NIBE under or in connection with this Agreement to Russia or for use in Russia, that are covered by this Agreement and that fall within the scope of Article 12g of Council Regulation (EU) No 833/2014 (as amended) or any other subsequent Council Regulation. The Distributor/Purchaser/Dealer also undertakes to take the necessary measures to prevent business partners or customers from doing the same. In the event of a breach of this obligation, Waterkotte/NIBE shall have the right to claim compensation for the damage caused by this breach and shall have the full right to suspend and/or terminate this agreement (including orders placed under this agreement).