

## Terms and Conditions of WAGNER Maschinenbau GmbH

Status - March 2017

### 1. Scope

1.1. These Terms and Conditions are applicable between us and natural and legal persons (in short, the Customer) for the legal transaction which is the subject of this contract and in relation to business customers, including for all future transactions, even if no explicit reference is made to them on an individual basis, particularly for **supplementary or follow-up orders**.

1.2. Business customers are also subject to the version of our General Terms and Conditions that is valid when the contract is concluded, and have been furnished with this version accordingly. This can be accessed on our **website** ([www.wagner-shredder.at](http://www.wagner-shredder.at)).

1.3. We enter into contracts **exclusively** on the basis of our General Terms and Conditions.

1.4. **Terms of Business of the Customer** or changes and additions to our General Terms and Conditions require our express approval, in order to be valid – for business customers this should be in the written form.

1.5. The Customer's Terms of Business shall not be recognised, even if they were not expressly **objected to** after having been presented to us.

### 2. Quotations / Conclusion of Contracts

2.1. Our quotations are **non-binding**.

2.2. **Promises**, assurances and guarantees on our part or agreements which diverge from these General Terms and Conditions in connection with the conclusion of contracts will only be binding in relation to business customers with our written confirmation.

2.3. Information about our products and services listed in catalogues, prices lists, brochures, displays on trade fair stands, circulars, direct marketing materials, or other media (**informational material**), which cannot be attributed to us, must be presented to us by the Customer – insofar as the Customer has based their decision to work with us on it. In this case, we can make a pronouncement on its accuracy. If the Customer breaches this obligation, such information is non-binding, insofar as it was not declared explicitly – in writing for business customers – as part of the contract.

2.4. **Cost estimates or quotations** are generated without guarantee and are always free of charge unless notification has been provided in advance regarding an obligatory fee. If we are commissioned to provide all of the services contained in the cost estimate, the charge for the cost estimate shall be credited on the invoice relating these commissioned services.

2.5. **Only upon receipt** of the agreed down-payment shall order execution and the agreed delivery period commence.

### 3. Prices

3.1. Prices are always quoted in EURO.

3.2. Where the Customer orders services, which **were not covered under the original order**, there is an entitlement to reasonable payment for such.

3.3. Prices are subject to the respective valid rate of **VAT** and are ex stores. Packaging, transport, loading and shipping costs, as well as customs duties and insurance shall be borne by the business Customer. In the case of customers who are consumers, these costs shall only apply if this has been negotiated for the individual contract. We are only obligated to take the packaging back in case of express agreement.

3.4. The Customer must arrange for the proper and environmentally friendly disposal of **waste materials**. If we are commissioned separately to provide this service, in the absence of an agreement covering payment for this, the Customer must make an adequate additional payment to the extent agreed.

3.5. We are entitled either on our own initiative, or at the request of the Customer, to **adjust** the contractually agreed payment if changes of at least 3 % have occurred since the contract was concluded, in respect of (a) wages due to statute, ordinance, collective bargaining, works agreements or (b) other cost factors necessary for the performance, such as material costs due to recommendations from joint committees or changes in the price of raw materials on the national or world market, changes to relevant exchange rates, etc. The adjustment shall occur to the extent by which the actual costs of production in the period when the contract was concluded have changed compared to the cost when the performance is actually rendered, provided that there is no delay.

3.6. The payment for long-term contractual obligations is agreed to be **value-protected** according to VPI 2010 (Austrian consumer price index) and is adjusted accordingly. The month in which the contract was concluded is taken as the starting basis.

3.7. For consumers as Customers, where the costs change, the payment is adjusted in accordance with point 3.5 and for long-term contractual obligations in accordance with point 3.6, negotiated on a contract-by-contract basis only, if the performance is to be rendered **within two months** of conclusion of the contract.

### 4. Provided Goods

4.1. If equipment or other materials are provided by the customer, we are entitled to bill the customer a **surcharge** of 5 % of the value of the provided equipment or the material.

4.2. Such equipment and other materials supplied by the Customer are **not** covered by the **warranty**.

4.3. The quality and readiness for use of provided goods is the exclusive responsibility of the Customer.

### 5. Payment

5.1. The contractual partner undertakes to pay the purchase price in full at the time of contractual agreement.

5.2. A down-payment must always be made or payment takes place in accordance with agreement.

5.3. Entitlement to a **discount** requires our express agreement, in writing for business customers.

5.4. If the Customer quotes their **payment references** on transfer slips then these are non-binding for us.

5.5. For contractors as customers who are **late with payment** due to their own fault, we are entitled to charge interest amounting to **9.2 %** points above the base rate according to § 456 UGB (Austrian Commercial Code). We charge consumers an interest rate of **4%**.

5.6. We reserve the right to assert **further damages from arrears**, however only against consumers as customers if this has been negotiated individually.

5.7. If the business customer is in default of payment in conjunction with other existing contractual relationships with us, then we are entitled to **discontinue fulfilment** of our obligations from this contract until the customer has fulfilled their own obligations.

5.8. We are then also entitled to make all claims from the current business relationship with the customer for performances already rendered **due and payable**. For consumers as customers, this only applies where an outstanding payment has been due for at least six weeks and we have reminded the Customer and threatened consequences, setting an additional period of at least two weeks, without effect.

5.9. The Customer only has **authorisation to offset claims** insofar as counterclaims have been established by law or recognised by us. Consumers as customers also have authorisation to offset claims insofar as counterclaims legal relate to the payment liability of the Customer, as well as due to an inability of our company to pay.

5.10. If the period for payment has expired, **price reductions** granted (discounts, allowances, etc.) are forfeited, and will be invoiced.

5.11. For **reminders** necessary and appropriate for the recovery of debts, if the Customer is late with payment due to their own fault, they are obligated to pay a reminder fee for each reminder in the amount of €20.00, insofar as this is in proportion to the pursued claim.

### 6. Credit Check

6.1. The Customer explicitly gives their consent for their data to be transferred to the officially privileged creditor protection associations Alpenländischer Kreditorenverband (AKV), Österreichischer Verband Creditreform (ÖVC), Insolvenzschutzverband für Arbeitnehmer oder Arbeitnehmerinnen (ISA) and Kreditschutzverband von 1870(KSV) exclusively for the purpose of protecting creditors.

### 7. Duty of Cooperation of the Customer

7.1. Our duty to **render the performance begins** at the earliest once the customer has met all of the construction, technical and legal **conditions**, which were outlined in the contract or in information provided to the Customer before the contract was concluded, or which the Customer should know already due to the relevant technical knowledge or experience.

7.2. If the Customer does not comply with this **duty of cooperation** – exclusively in respect of the performance not rendered fully due to incorrect information from the Customer – our performance shall not be judged deficient.

7.3. The Customer must arrange for the necessary approvals of third parties as well as **notification and approvals** by official bodies at its own cost. This is referred to during conclusion of the contract, unless the Customer has foregone this requirement or the business customer was expected to have knowledge of such due to their training or experience.

7.4. The **power**, etc. required for the performance, including the test run, must be provided by the customer at their own cost.

7.5. The Customer is liable for ensuring realisation of the **structural, technical and legal preconditions** necessary for the works to be delivered or for the purchase object, as outlined in the contract or in information provided to the Customer before the contract was concluded, or which the Customer should know already due to the relevant technical knowledge or experience.

7.6. The customer must make available to us free of charge, for the period of rendering the performance, **lockable rooms** for workers as well as for the storage of tools and materials.

7.7. Order-specific details on the necessary information can be requested from us.

7.8. The Customer is not entitled to **transfer** rights or receivables from the contract without our prior written permission.

### 8. Rendering of the Performance

8.1. We are only obligated to take retrospective **change and** extension wishes of the Customer into account if these are necessary for technical reasons, in order to achieve the purpose of the contract.

8.2. Minor, objectively justifiable **modifications to our performance** are deemed to be approved in advance, if they are reasonable to the business Customer.

8.3. If, after order placement, a **modification** or supplement to the order should arise for any reason then the delivery/performance deadline shall extend by an appropriate period.

8.4. If, after conclusion of the contract, the Customer requires that performance take place within a **shorter time frame**, this constitutes a change to the contract. Overtime hours and/or an acceleration of material procurement may be necessary here and this may increase costs. Payment shall increase proportionately, according to the additional outlay required.

8.5. Objectively justifiable (e.g. size of the machine, progress of construction, etc.) **partial deliveries** and

performances are permitted and may be invoiced separately.

#### **9. Delivery Periods and Deadlines**

9.1. Periods and deadlines may be moved or extended in the event of **force majeure**, strike, unforeseen delays at our suppliers for which we hold no responsibility, or other comparable events, which are outside of our influence, for the period for which the event in question lasts. This does not affect the Customer's right to withdraw from the contract in the event of delays which make it unreasonable to be bound by the contract.

9.2. If the start or rendering of the performance is **delayed or interrupted by circumstances for which the customer is responsible**, especially due to the breach of the duty of cooperation according to these General Terms and Conditions, then periods for rendering the performance will be extended accordingly and the arranged completion deadlines postponed accordingly.

9.3. We are entitled to charge 3 % of the invoice amount for any resulting **storage** of materials, equipment or similar on our premises per month commenced of the performance delay, whereby the payment obligation of the customer as well as their obligation to accept remain unaffected by this.

9.4. Delivery and completion deadlines are only **binding** for business customers if their observance has been agreed in writing.

9.5. In case of **delay** with the fulfilment of the contract by us, the Customer has a right to withdraw from the contract, after first setting a reasonable additional period. This additional period must be set in writing (in the case of business customers, by registered letter) and also threaten withdrawal from the contract.

#### **10. Standards and regulations**

10.1. The machine(s) or performance item(s) shall be produced exclusively according to European standards.

10.2. Design and production are subject to the **EC Machinery Directive 2006/42/EC**

10.3. Electrical equipment is also designed in accordance with EC directive 2006/42/EC.

10.4. The EC standards and regulations have been applied for operational safety.

10.5. The machine shall be delivered with CE labelling.

10.6. If **other safety standards** and regulations governing industrial health and safety apply in the country of use, the **Customer or seller must ensure** that the machine satisfies these! It cannot be assumed that the manufacturer is familiar with these and constructs the machine according to them.

10.7. In case of a **failure to comply** with the local legal regulations, the machine must **not be put into operation!** Only once all requirements are satisfied may it be put into operation.

10.8. In case of visible defects, it is strictly prohibited to put the machine into operation!

10.9. With an **incomplete machine**, in accordance with the EC Machinery Directive 2006/42/EC annex IIB, **commissioning is prohibited**, until it has been ascertained that the machine complies with the EC Machinery Directive.

#### **11. Operating and maintenance manual**

11.1. This is generated in German.

11.2. Text, images and programs have been produced with the utmost care. However, translators and authors cannot accept any legal responsibility or liability for any remaining incorrect information and the consequences of this.

11.3. It is essential to comply with the safety information and specifications therein.

11.4. The machine must be used exclusively as intended.

11.5. The manual contains the EC declaration of conformity in accordance with the EC Machinery Directive 2006/42/EC.

#### **12. Assumption of Risk**

12.1. THE TRANSFER OF RISK WITH A **SENDING OF THE GOODS TO THE CONSUMER** IS SUBJECT TO § 7B KSCHG (CONSUMER PROTECTION ACT).

12.2. THE RISK SHALL TRANSFER TO THE BUSINESS CUSTOMER AS SOON AS WE HAVE READIED THE PURCHASE OBJECT, MATERIAL OR WORKS **FOR COLLECTION FROM THE FACTORY OR WAREHOUSE**, DELIVERED THESE OURSELVES OR HANDED THEM OVER TO A CARRIER.

12.3. THE BUSINESS CUSTOMER WILL ACCORDINGLY INSURE THEMSELVES AGAINST THIS RISK. WE UNDERTAKE TO TAKE OUT TRANSPORT INSURANCE ON WRITTEN REQUEST BY THE CUSTOMER AND AT THEIR COST. THE CUSTOMER APPROVES ALL STANDARD FORMS OF SHIPPING.

#### **13. Default of Acceptance**

13.1. If the Customer is in default of acceptance by longer than 4 weeks (refusal of acceptance, delays with preliminary work, etc.), which delays or prevents rendering of the performance, and the Customer has not ensured that circumstances for which they are responsible have been rectified after a reasonable additional period has elapsed, if the contract is sustainable we may dispose of the **equipment and materials specified for the rendering of the performance otherwise**, provided that we acquire such equipment and materials again within a period reasonable to the particular circumstances, if the performance is continued.

13.2. If the Customer is in default of acceptance, we are likewise entitled, if fulfilment of the contract is demanded, to **store** the goods at our site, for which we are entitled to a storage fee in the amount of EUR 500.00.

13.3. This has no effect upon our right to make payment for performances rendered due and, after a reasonable addition period, to **withdraw** from the contract.

13.4. Where we withdraw from the contract with good cause, we are entitled to demand lump sum **compensation** from the business Customer in the amount of 50 % of the value of the order plus VAT, without the burden of proving the actual damage incurred. The obligation for a business customer to pay compensation applies irrespective of fault.

13.5. The assertion of **further loss** is admissible. Consumers shall only have this right if this has been negotiated individually.

#### **14. Retention of Title**

14.1. The goods (machine) delivered, installed or otherwise handed over by us shall remain our property until payment has been received in full.

14.2. **Resale** is only permitted if we are notified beforehand in good time, providing the name and address of the buyer, and we have agreed to the sale. If we agree, the purchase price receivable from the business Customer shall be considered already **assigned** to us at this point.

14.3. The Customer is required to note this **assignment** in their books and on their invoices until complete payment of the due amount or purchase price, and to inform their **debtors** of this. On demand, the Customer is required to make available all documents and information required in order to assert the assigned receivables and claims.

14.4. If the Customer is in default of payment, after a reasonable additional period has elapsed, we are entitled to demand surrender of the goods subject to retention of title. For consumers as customers, we may only exercise this right where at least one outstanding payment of the consumer has been due for at least six weeks and we have reminded them and threatened legal consequences, setting an additional period of at least two weeks, without effect.

14.5. The Customer must notify us immediately prior to the commencement of bankruptcy proceedings on their assets or the seizure of our goods subject to retention of title.

14.6. The Customer expressly consents to us accessing the **location** of the goods subject to retention of title, in order to assert our retention of title.

14.7. The Customer shall bear necessary and reasonable **costs** incurred through appropriate legal action.

14.8. Assertion of the retention of title shall only represent a **withdrawal from the contract** if this is explicitly stated.

14.9. We may **dispose of** goods subject to retention of title that have been reclaimed on the open market and **to our best advantage**.

#### **15. Intellectual Property Rights of Third Parties**

15.1. If the Customer contributes **intellectual creations** or documents and if intellectual property rights of third parties are asserted in respect of such creations, then we shall be entitled to cease production of the delivery object at the Customer's risk until the rights of third parties have been established and to demand compensation of the necessary and appropriate costs incurred by us, except where the claim is obviously not justified.

15.2. The Customer shall **indemnify and hold us harmless** in this matter.

15.3. We are entitled to demand from business customers reasonable **advances on costs** for all process costs incurred.

#### **16. Intellectual Property Rights of Third Parties**

16.1. If the Customer contributes **intellectual creations** or documents and if intellectual property rights of third parties are asserted in respect of such creations, then we shall be entitled to cease production of the delivery object at the Customer's risk until the rights of third parties have been established and to demand compensation of the necessary and appropriate costs incurred by us, except where the claim is obviously not justified.

16.2. The Customer shall **indemnify and hold us harmless** in this matter.

16.3. We are entitled to demand from business customers reasonable **advances on costs** for all process costs incurred.

16.4. The Customer is solely responsible for guaranteeing that delivery objects do not infringe the intellectual property rights of third parties in case of all delivery goods that we produce **in accordance with customer documents** (design specifications, drawings, models or other specifications, etc.).

16.5. If the intellectual property rights of third parties are asserted regardless of this, we shall be entitled to **cease production** of the delivery objects at the Customer's risk until the rights of third parties have been established, except where the claim is obviously unjustified.

16.6. We are also entitled to demand that the Customer reimburse all necessary and reasonable **costs** that we have incurred.

#### **17. Our Intellectual Property**

17.1. **Plans**, drawings, quotations and other documents provided by us or produced with contributions from us remain our intellectual property.

17.2. The use of such documents for purposes other than those intended, in particular **dissemination**, reproduction, publication and provision to third parties, also in extract form, requires our express approval.

17.3. The Customer furthermore undertakes to maintain the **confidentiality** of knowledge acquired with respect to third parties as a result of the business relationship.

17.4. If we have handed over objects to the customer in the context of initiating, concluding and handling of the contract, which were not owed for rendering the performance (e.g. samples of paint or safety fittings, lighting fixtures, etc.), they must be returned to us within 14 days. If the Customer does not comply with a corresponding request on schedule, we are entitled to demand lump sum **compensation** from the Customer in the amount of 50 % of the value of the objects provided, without the burden of proving the actual damage incurred. The obligation for a company to pay compensation applies irrespective of fault.

#### **18. Warranty**

18.1. The statutory warranty provisions apply. The **warranty term** for our performances for business customers is one year from handover.

18.2. In the absence of arrangements to the contrary (e.g. formal acceptance), the **handover** date is the date of completion, not later than when the Customer assumes power of disposal of the performance or has refused handover without justification.

18.3. If a mutual handover is intended and the Customer does not attend the handover appointment communicated to them, the handover is deemed to have taken place on that day.

18.4. The **rectification** of a defect asserted by the Customer does not represent an acknowledgement of this defect.

18.5. The business customer shall allow us at least **two attempts** to rectify the defect.

18.6. If the Customer's assertions of a defect are unjustified, the Customer is obligated to compensate us for the **expenses** incurred in establishing the absence of a defect or in fault rectification.

18.7. The business customer must always **prove** that the defect already existed on the handover date.

18.8. In order to permit the rectification of defects, the Customer must make the system or equipment **accessible** to us without culpable delay, and provide us or our appointed experts with the possibility of evaluation.

18.9. We must be **notified of defects** with the delivery object that the business customer discovers in the course of ordinary business by inspection after delivery, or could reasonably be expected to have discovered, immediately in writing, but no later than 14 days after handover. We must also be notified of hidden defects within this reasonable period, from the date they are discovered.

18.10. Any other **use or processing** of the defective delivery object, through which further damage may occur or which will make it harder to ascertain the cause, must be discontinued by the Customer without delay, provided that it is not unreasonable to do so.

18.11. If a **notice of defects** is not raised in due time, the goods shall be considered as approved.

18.12. If the Customer's **assertions of a defect** are **unjustified**, the Customer is obligated to compensate us for the expenses incurred in establishing the absence of a defect or in fault rectification.

18.13. Any other **use or processing** of the defective delivery object, through which further damage may occur or which will make it harder to ascertain the cause, must be discontinued by the Customer without delay, provided that it is not unreasonable to do so.

18.14. We are able to avert **withdrawal** through rectification or an appropriate price reduction, insofar as the defect is not a significant and irreparable defect.

18.15. If the performance objects are manufactured on the basis of **information**, drawings, plans, models or other specifications of the **Customer** then we only provide a guarantee of compliant execution.

18.16. A defect is not deemed to exist if the works are not fully suitable for the intended use, if this is exclusively due to actual conditions **deviating** from the **information** that was available to us at the time of performance execution, because the customer did not meet with their obligation to cooperate.

18.17. Where this is economically viable, the defective delivery or samples of such must be **returned** to us by the business customer.

18.18. The business customer must bear the costs for **returning** the defective items to us in full.

18.19. The Customer is responsible for enabling us to **establish the defect immediately**.

18.20. The warranty is excluded if the technical equipment of the Customer, such as supply lines, cabling and similar is not in a technically sound and operational condition or is not **compatible** with the delivered objects, provided that this circumstance is causal in the defect.

## 19. Liability

19.1. We are liable for **property damages** for violation of contractual or pre-contractual obligations, particularly due to impossibility, delay, etc., only in cases of intent or gross negligence.

19.2. For business customers, this liability is **limited** at most to the maximum amount for liability under the liability insurance taken out by us.

19.3. This limit also applies in respect of damage to items we have **accepted for processing**. However, for consumers this shall only apply if this has been negotiated for the individual contract.

19.4. Compensation claims by business customers must be asserted in court within two years or will be forfeited.

19.5. The exclusion of liability also includes claims against our **employees**, representatives and vicarious agents for damages which they cause to the Customer, without reference to any contract between them and the customer.

19.6. Our liability is excluded for damage caused by **improper handling** or storage, over-loading, failure to follow operation and installation instructions, improper installation, commissioning, maintenance, service by the customer or by third parties not authorised by us, or natural wear and tear, provided that this event was causal for the damage. Liability is also excluded where required maintenance work is neglected, unless we have undertaken the contractual obligation to perform maintenance.

19.7. If and insofar as the Customer is able to claim **insurance benefits** from indemnity insurance taken out by them or in their favour (e.g. third party liability insurance, all-risks, transportation, fire, business interruption and other), for damage for which we are liable, the Customer is obligated to claim the insurance benefit and shall limit our liability to the penalty owed by the Customer for the insurance claim (e.g. increased insurance premiums).

19.8. All product characteristics are due, which the Customer may expect of us, third party manufacturers or importers, with regards to the approval regulations, operating instructions and other product-related instructions and information (in particular also controls and maintenance) with consideration to the Customer's knowledge and experience. The Customer, as the reseller, is required to take out sufficient insurance cover for product liability claims, and to keep us harmless and free from any recourse claims.

## 20. Severability Clause

20.1. Should individual parts of these General Terms and Conditions be ineffective, this shall have no effect upon the **validity** of the remaining parts.

20.2. We and the business customer hereby undertake – based on the good faith of contracting parties – to jointly agree on a **substitute provision**, which mirrors the commercial purpose of the ineffective condition as closely as possible.

## 21. General Information

21.1. The contractual relationship shall be governed by **Austrian law**.

21.2. The UN Convention on Contracts for the International Sale of Goods does not apply.

The **place of fulfilment** is the registered office of the company (Neuhaus am Klausenbach).

21.3. The legal venue for all disputes arising from the contractual relationship or from future contracts between us and the business customer is the local court with jurisdiction for our place of business. The legal venue for consumers, insofar as they reside at a domestic address, is the court presiding over the area in which the consumer usually lives or works.

21.4. The Customer must inform us in writing and with immediate effect of any changes to their name, company, address, legal form or any other relevant information.