

## Whelen Engineering Company, Inc

### General Conditions of Sale and Delivery

#### 1. Scope of Application

For all sales and other deliveries the following conditions of sale and delivery shall exclusively apply.

Deviating conditions or acknowledgements of the orderer shall apply only if and to the extent that we have expressly agreed thereto. Our silence to other conditions or acknowledgements shall in particular not be deemed to constitute acceptance or consent. We hereby expressly object to such other conditions or acknowledgements of the orderer.

#### 2. Conclusion of a Contract; Scope of Delivery

2.1 Our offers are made without obligation. A contract is concluded only if and when we confirm the acceptance in text form or writing or when the goods are delivered by us.

2.2 Side agreements, representations, amendments of the contract and other deviating agreements shall be valid only if expressly confirmed by us in text form or writing.

2.3 The scope of delivery shall be determined by our confirmation of order to be rendered in text form or writing by us. The delivery of excess or smaller quantities shall be admissible within the usual limits.

2.4 It is the responsibility of the orderer to carefully check each order for accuracy and notify us three (3) days of any discrepancies. This includes, but is not limited to, product, pricing and schedules. If no response is received, respective confirmation of order shall be deemed accepted.

#### 3. Prices

3.1 Our prices are understood in US Dollars, ex works (EXW) Chester, CT, USA or Charleston, New Hampshire, USA (Incoterms 2010") plus packaging and shipment costs to be paid by the orderer as well as value added tax in the amount required by law, if any.

3.2 Our prices do not include taxes, fees, customs duties or similar charges arising outside the United States of America through the conclusion or the implementation of the transaction. If we are required to pay such charges, we shall have the right to invoice such additional costs to the orderer. The same shall apply if insurance costs or public charges as described above are newly introduced or are increased after the conclusion of the contract.

#### 4. Terms of Payment

4.1 Unless otherwise agreed, payments shall be made net cash immediately prior to order processing by Whelen. Payment by bill of exchange is allowed only with our prior consent. All costs arising from this shall be borne by the orderer. Payments – also if made by bill of exchange or cheque – shall be deemed to have been made only if and when we can dispose of the invoice amount including all ancillary claims.

4.2 Objections to the calculation of the invoice for our goods must be made in writing no later than ten (10) days after receipt of the invoice. If the orderer fails to object in due form and within the required time, the invoice shall be deemed accepted.

4.3 In the event of default in payment, we shall have the right to charge default interest in the amount of 8% above the base interest rate of the European Central Bank. We reserve, however, the right to assert further damages going beyond this and to require separate credit support (in the form of letter of credit or otherwise) from an independent financial institution reasonably acceptable to Whelen. The orderer has the right to prove to us that no damage or lower damage was incurred by us due to default. In any case we shall have the right to demand the statutory interest rate.

4.4 In furtherance of the foregoing, if terms of payment are not complied with or if circumstances become known which at our reasonable commercial discretion give rise to justified doubts as to the orderer's credit

worthiness, we shall have the right in such cases, without prejudice to any further statutory rights, to demand security acceptable to us for outstanding deliveries, and, if a reasonable additional period passes without such security being provided, to cancel the contract and demand damages.

4.5 The orderer can set off claims against our payment claims only if the counter claim is undisputed or has been awarded by final judgement. A right of retention can be asserted by the orderer only to the extent that it is based on claims arising from the same contractual relationship.

#### 5. Delivery Period: Default

5.1 Delivery dates and delivery and performance periods, which can be agreed on in a binding or non-binding manner, are to be agreed on in text form or writing. The date of the confirmation of the order shall be relevant for the delivery and performance periods. However, they shall not begin before total clarity exists with respect to all information and documents to be provided by the orderer. Delivery shall be deemed to be observed within the delivery period if we notify the orderer of readiness for delivery before the expiry of the delivery period.

5.2 The limitation of liability in this clause 5 shall not apply to damage arising from grossly negligent or intentional breach of duty, nor shall it apply to damage arising from an injury of life, body or health. These regulations shall also not involve a shift in the burden of proof to the orderer's disadvantage.

5.3 In the event of default on our part, the orderer can cancel the contract only to the extent that we are responsible for the delay by negligent or intentional conduct.

5.4 In the event of force majeure or of the disruption of operations affecting us or our suppliers, preventing us temporarily without any fault of our own from delivering within the agreed period, including fire damage, confiscation, labour disputes (strike, lock-out), boycotts, energy and raw material shortages, and the like, the delivery and performance periods shall extend by the duration of the disruptions caused by these circumstances. If these disruptions result in a delay in performance by more than four months, the orderer can cancel the respective agreement. Other statutory cancellation rights shall remain unaffected by this provision without prejudice to clause 5.3 above.

#### 6. Part Delivery and Part Performance

Part delivery and part performance shall be admissible if we have a legitimate interest therein and the orderer can reasonably be expected to accept it.

#### 7. Shipment

7.1 Unless otherwise agreed, shipment is made by us ex works (EXW) Chester, CT, USA or Charleston, New Hampshire, USA (Incoterms 2010") without insurance at the orderer's risk and expense.

7.2 The risk shall pass over when we have placed the goods at disposal of the orderer, or its selected carrier, at our facilities or any other named place. This shall apply also if we accept to make delivery. Transport insurance shall be taken out by us only at the orderer's special instructions and expense.

7.3 If shipment is delayed in consequence of the assertion of our right of retention due to entire or partial default in payment, or for any other reason which the orderer is responsible for by negligent or intentional conduct, the risk shall pass over to the orderer on the day of notification of readiness for delivery at the latest.

7.4 Goods reported ready for shipment and due for delivery must be called immediately by the orderer. If goods ready for shipment are not called and accepted without undue delay, we can at our choice either ship the goods or store them at the orderer's cost and risk.

## 8. Warranty

8.1 The statutory provisions shall apply to the orderer's rights in the event of material defects and defects of title (including incorrect and short delivery as well as improper assembly or incorrect assembly instructions) unless otherwise specified below. In all cases, the statutory provisions shall remain unaffected upon final delivery of the unprocessed goods to a consumer, even if the consumer has further processed them (supplier recourse pursuant to §§ 478 ff.BGB). Claims arising from supplier recourse are excluded if the defective goods have been further processed by the orderer or another entrepreneur, e.g. by installation in another product.

8.2 The basis of our liability for defects is above all the agreement reached on the quality of the goods. All product descriptions which are the subject to the individual contract or which have been made public by us shall be deemed to be an agreement on the quality of the goods. We are not responsible for the use of incompatible chemicals (including de-icing or road treatment), cleaning products or abuse, misuse, improper installation, excessive voltages, or alterations to the goods that affect the intended use and service. Moreover, the use of magnetic or vacuum/suction mounted warning lights mounted on the roof or exterior of a vehicle in motion is at the sole risk and discretion of the user.

8.3 Insofar as the quality has not been agreed, it shall be assessed in accordance with the statutory provisions whether a defect exists or not (§ 434 Para. 1 S. 2 and 3 BGB).

8.4 The orderer's claims based on defects are subject to the orderer having complied with its statutory obligations to inspect and give notice of defects (§§ 377, 381 HGB). If a defect becomes apparent upon delivery, the inspection or at any later point in time, we must be notified of this immediately in writing. In this case, obvious defects must be notified in writing within 10 working days of delivery and defects not apparent during the inspection must be notified in writing within the same period of time from discovery. If the orderer fails to properly inspect the goods and/or to notify us of any defects within the time frame given, our liability for the defect not reported or not reported in a timely manner or not notified properly shall be excluded in accordance with the statutory provisions.

8.5 If a delivered good is defective, we may choose whether to provide subsequent performance by remedying the defect (subsequent performance) or by delivering a defect free product (replacement delivery). Our right to refuse subsequent performance under the statutory provisions shall remain unaffected.

8.6 We shall be entitled to make the subsequent performance that is owed subject to the orderer paying the due purchase price. However, the orderer shall be entitled to retain a reasonable portion of the purchase price in the relation to the defect.

8.7 The orderer shall give us the time and opportunity required for the owed subsequent performance, in particular to hand over the rejected product for inspection purposes. In the event of a replacement delivery, if requested by us, the orderer must return the defective product to us in accordance with the statutory provisions. Subsequent performance does not include the removal of the defective item or its reinstallation if we were not originally obliged to install it.

8.8 We shall bear or reimburse the expenses necessary for the transportation back to the orderer, if a defect actually exists. Otherwise, we may demand compensation from the orderer for the costs incurred as a result of the unjustified request to remedy the defect (in particular testing and transport costs), unless the orderer was unable to recognize the defect.

8.9 If the subsequent performance has failed or if a reasonable period of time to be set by the orderer for the subsequent performance has expired without success or is superfluous according to the statutory provisions, the orderer can withdraw from the purchase contract or reduce the purchase price. In the case of an insignificant defect, however, there is no right of withdrawal.

8.10 Claims of the orderer for damages or futile expenses exist only in

accordance with Section 9 below, and are otherwise excluded, even in the case of defects.

## 9. Other Liability

9.1 Insofar as these General Terms and Conditions, including the following provisions, do not provide otherwise, we shall be liable in the event of a breach of contractual and non-contractual obligations in accordance with the statutory provisions.

9.2 We shall be liable for damages - regardless of the legal basis - within the scope of fault-based liability only in cases of intent and gross negligence. In the case of simple negligence, we shall only be liable, except when statutory provision provide for a lower liability standard in (e.g. for care in our own affairs), in the following cases

- a) for damages resulting from injury to life, body or health,
- b) for damages arising from a not inconsiderable breach of an essential contractual obligation (an obligation the fulfilment of which is essential for the proper execution of the contract and on the observance of which the contractual partner regularly relies and may rely); in this case, however, our liability is limited to compensation for the foreseeable, typically arising damage.

9.3 The limitations of liability resulting from paragraph 9.2 above shall also apply to breaches of duty by or for the benefit of persons whose fault we are responsible for in accordance with the statutory provisions. They do not apply if we have concealed a defect or if we have given a guarantee for the quality of the goods and for claims of the orderer according to the Product Liability Act.

9.4 Due to a breach of duty which does not consist in a defect, the orderer may only withdraw or terminate the contract if we are responsible for the breach of duty. A free right of termination of the orderer (in particular according to §§ 651, 649 BGB) is excluded. Otherwise, the statutory prerequisites and legal consequences shall apply.

## 10. Statute of limitation

10.1 Notwithstanding § 438 para. 1 no. 3 BGB, the general limitation period for claims arising from material defects and defects of title shall be one year from delivery. If acceptance has been agreed, the limitation period shall begin upon acceptance.

10.2 The aforementioned limitation periods of the sale of goods law also apply to contractual and noncontractual claims for damages of the orderer which are based on a defect of the goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in the individual cases. Claims for damages of the orderer according to 9.2 sentence 1 and sentence 2(a) as well as according to the Product Liability Act shall, however, become statute-barred exclusively according to the statutory limitation periods.

## 11. Limitation of other Claims

Other claims of the buyer than defect-based claims shall be time-barred in two years after the beginning of the statutory limitation period. This limitation shall not apply to our liability for damages arising from the injury of life, body and health or other damages arising from grossly negligent or intentional breach of duty or our liability under the Product Liability Act.

## 12. Deliveries and Services through Third Parties

We can also have our deliveries made and services rendered through third parties without the orderer's rights against us being affected thereby.