

# General Terms and Conditions of Wahtari GmbH

(as of September 2023)

**Note:** This English translation of the German version of our General Terms and Conditions („Allgemeine Geschäftsbedingungen“, which can be found [here](#)) solemnly applies if we communicated with you in English and our contractual language was English as well. In case of discrepancies between the German and the English version, the German version (which can be found [here](#)) shall prevail. Correspondingly, please be advised to specifically note No. 11 of these General Terms and Conditions.

## 1. Scope of Application

All offers, sales, deliveries and other services of Wahtari GmbH (hereinafter also referred to as "**Contractor**") are based on the following terms and conditions (hereinafter also referred to as "**GTC**").

By placing an order or accepting the goods or the contractual service on the part of the customer or client (hereinafter also referred to as "**Customer**"), these GTC shall be deemed accepted. They shall also apply to all future business relations without the need for a renewed express written agreement.

The Contractor shall be entitled to amend and adapt these GTC during the term of the contract with effect for the future if this becomes necessary for a compelling reason, such as compelling operational reasons, the amendment of laws or jurisdiction, or if exclusively new services of the Contractor (such as the expansion of the offer by providing additional services) are introduced. The Contractor shall send the amended terms and conditions to the Customer in text form prior to the planned entry into force and shall make special reference to the new provisions and the date of entry into force. At the same time, the Contractor shall grant the Customer a reasonable period of at least four (4) weeks to declare whether it objects to the amended terms and conditions. If no objection is made within this period, which shall commence upon receipt of the notice in text form, the amended terms and conditions shall be deemed agreed. The Contractor shall separately inform the Customer at the beginning of this period of this legal consequence, i.e. the right to object, the objection period and the significance of silence.

Deviating terms and conditions of the Customer that are not expressly acknowledged in writing by the Contractor shall not be binding, even if the Contractor has not expressly objected to them.

## 2. Offers, Conclusion of Contract and Subject Matter of Contract

All offers are non-binding and subject to change until written confirmation of order.

Drawings, illustrations, dimensions, weights and other performance data, in particular in brochures, performance descriptions or documents provided to the Customer, shall only be binding if this is expressly agreed in writing. In this case they are an integral part of the contract.

In the event that products to be delivered by the Contractor contain AI-supported software for camera-based quality control (hereinafter the "**SOFTWARE**"), the Customer acknowledges that the functional scope of the SOFTWARE is bindingly and conclusively derived from the performance description agreed between the parties. Furthermore, the Customer acknowledges that the SOFTWARE's decisions (hereinafter the "**Predictions**") for the respective application are merely assumptions made on the basis of probabilities and whose quality depends in particular on the quality of the data points fed in by the Customer.

The contractual scope of services of the SOFTWARE therefore explicitly does not include the correctness of the predictions. The use of the SOFTWARE cannot replace a human decision.

If a financing offer is made to the Customer in addition to the purchase offer, this is always made under the reservation that the financing is taken over by the participating financier. If the latter rejects the Customer's request, the Contractor is free to withdraw from the offer or order or to insist on fulfillment by the Customer, even without justification.

## 3. Delivery and Performance Period

In the event of non-delivery by a pre-supplier for which the Contractor is not responsible, the Contractor shall be entitled to withdraw from the contract. In this case, the Contractor shall immediately inform the Customer of the non-availability of the goods and immediately refund any consideration already paid. Delivery dates or deadlines are approximate and non-binding, unless the contracting parties have expressly agreed otherwise in writing.

The Contractor shall not be responsible for delays in delivery and performance due to force majeure (e.g. operational disruptions due to fire, water and similar circumstances, failure of production facilities and machinery, strike and lockout, lack of material, energy, transport facilities, pandemics, governmental interventions) and due to unforeseeable events which make it significantly more difficult or impossible for the Contractor to provide the contractual service, even if they occur at suppliers or their sub-suppliers, even in the case of bindingly agreed deadlines. They shall entitle the Contractor to provide the delivery or the contractual service at a later date, taking into account the duration of the delay plus a reasonable start-up period. The Customer shall be informed immediately of the occurrence of such a delay.

Should the delay continue for an unreasonably long period, either party to the contract may withdraw from the contract without substitute performance.

If the Contractor is unable to meet the delivery date agreed in writing for any other reason, the Customer shall give the Contractor written notice of default and grant a period of grace appropriate to the nature and scope of the performance, unless the performance is determined by a specific calendar date. Compliance with the delivery deadline shall be subject to the fulfillment of all contractual obligations on the part of the Customer.

The Contractor shall be entitled to make partial deliveries and render partial services insofar as they are reasonably acceptable for the Customer.

In case of non-collection of goods to be collected by the Customer or in case of refused acceptance, the Contractor shall be entitled to refuse performance of the contract and to claim damages in the amount of 10% of the purchase price after one written request for collection with a reasonable period of time. The amount of damages may be set higher or lower if one party proves higher or lower damages.

## 4. Transfer of Risk

In the case of the delivery of goods, the shipment shall be made for the account and at the risk of the Customer, i.e. the risk of accidental loss and accidental deterioration of the goods shall pass to the Customer as soon as the goods have been handed over to the forwarder, the carrier or any other person or institution designated to carry out the shipment. This shall also apply irrespective of whether the shipment is made from the place of performance and who bears the shipping costs.

If the goods are ready for shipment and the shipment or acceptance is delayed for reasons for which the Customer is responsible, the risk shall pass to the Customer upon receipt of the notice of readiness for shipment. Storage costs shall be borne by the client.

## 5. Delivery, Acceptance

When delivering, it is assumed that the vehicle can drive directly up to the building and unload. Additional costs caused by further transport routes or due to difficult access from the vehicle to the building shall be charged separately. Transportation of any goods by the Contractor will not be made beyond the ground floor. If the

execution of the work by the Contractor or the persons commissioned by him is hindered by circumstances for which the Customer is responsible, the corresponding costs (e.g. working time and transportation expenses) shall be invoiced.

Acceptance of the delivery and performances shall take place immediately after reported completion. This shall also apply to self-contained partial deliveries or partial services.

## **6. Warranty**

If the delivery or service is defective, the Contractor may remedy the defect. If the rectification of defects fails twice after a reasonable deadline, the Customer may choose to rectify the defect itself and demand reimbursement of the necessary expenses. The Customer shall also be entitled to demand rescission of the contract instead of a reduction. In all other respects, the Customer's claims based on defects in the purchased goods shall be governed by the statutory provisions within the statutory time limits, unless otherwise agreed in writing between the parties.

The Customer shall notify the Contractor in writing of any defects without delay, but no later than 10 days after delivery or performance of the contractual service. Defects which cannot be discovered within this period even after careful inspection shall be notified to the Contractor in writing immediately after discovery. The inspection and notification obligations of § 377 of the German Commercial Code (HGB) concerning the Customer as a merchant shall remain unaffected by this.

The defective contractual supplies or services shall be kept available by the Customer for inspection by the Contractor in the condition in which they are at the time of the discovery of the defect. The removal of the defect as well as any other processing of the contractual deliveries or services by others than the Contractor as well as a violation of the above obligations shall exclude any warranty claim against the Contractor.

The Contractor warrants that its performance at the time of acceptance has the contractually agreed quality and is suitable for the use presumed under the contract or for normal use and has a quality which is customary for works of the same kind and which the Customer can expect according to the nature of the work. For software supplied by the Contractor, agreed quality means that the software complies with the agreed performance descriptions.

Claims for defects shall not exist in the event of natural wear and tear or damage resulting from incorrect or negligent handling. If the Customer carries out improper repair work or modifications, there shall also be no liability claims for these and the resulting consequences.

Furthermore, a warranty is excluded if the operating and assembly instructions handed over to the Customer have not been provably complied with. Claims for damages under the Act on Liability for Defective Products (ProdHaftG) shall remain unaffected.

The assignment of warranty claims to third parties is generally excluded. If the Customer sells the goods delivered by the Contractor to third parties, he shall be prohibited from referring to the Contractor on account of the associated statutory or contractual warranty claims.

Notices of defects shall not affect the due date of the purchase price claim, unless their justification has been acknowledged by the Contractor in writing or has been legally established. If the Customer acquires several devices in one contract or if he acquires a system consisting of several devices, it shall be agreed upon placing the order that a claim for reduction or withdrawal shall in principle only exist for the individual device affected by defects, but not for all devices or the entire system, unless the devices have all been sold belonging together and the defective device cannot be separated from the others without disadvantage for the Customer.

In the event that the Customer purchases a system of interconnected devices (network), the Customer warrants that it will only use suitable (network-compatible) software in accordance with the manufacturer's license terms. Otherwise, he releases the contractor from the warranty. The Customer agrees that the Contractor may log and store the installation data at the time of delivery.

## **7. Liability**

The Contractor shall be liable without limitation for damages due to intentional or grossly negligent acts, culpable injury to body, life and/or health, in the event of breach of a warranty expressly designated as a "guarantee", and in the event of mandatory statutory liability under the Product Liability Act.

In cases other than those described in the preceding paragraph, the Contractor's liability for the ordinarily negligent breach of a material contractual obligation, the fulfillment of which is necessary for the achievement of the purpose of the contract and on the fulfillment of which the Client may therefore regularly rely, shall be limited to the damage foreseeable at the time of the conclusion of the contract and typical for the contract. The liability for damages foreseeable at the time of the conclusion of the contract and typical for this type of contract is limited in total to 1.5 times the gross purchase price of the respective individual object of purchase.

In all other cases, the Contractor shall not be liable for ordinary negligence.

The above liability provisions shall also apply in favor of the Contractor's bodies, employees, representatives and/or vicarious agents.

## **8. Retention of Title**

Until all claims to which the Contractor is entitled against the Customer for any legal reason now or in the future have been satisfied, the Contractor shall retain title to the delivered goods. The Customer may not dispose of the goods delivered under retention of title, in particular may not sell them, gift them, pledge them or assign them as security. If the contractual delivery or service is provided for a business operation maintained by the Customer, the goods may be resold in the ordinary course of business. In this case, the Customer's claims against the purchaser arising from the sale shall already now be assigned to the Contractor; if the value of the securities existing for the Contractor exceeds its claims against the Customer by more than 20% in total, the Contractor shall be obliged to release the securities of its choice to this extent at the Customer's request.

The Customer shall be obliged to adequately insure the goods against fire, water, theft and burglary for the duration of the retention of title. If necessary, he shall assign the insurance claims to the Contractor in the amount of the value of the goods or in the amount of the outstanding claims.

Processing or transformation of the delivered goods shall always be carried out for the Contractor as manufacturer. If the (co-)ownership of the Contractor expires due to combination, it is already agreed now that the (co-)ownership of the Customer in the resulting uniform item shall pass to the Contractor in proportion to the value (invoice value). The Customer shall keep the (co-)ownership of the Contractor free of charge.

In the event of access by third parties, in particular by bailiffs, to the reserved goods, the Customer shall be obliged to point out the (co-)ownership of the Contractor and to notify the Contractor without delay.

In the event of a breach of contract by the Customer, in particular in the event of default in payment, the Contractor shall be entitled to take back the reserved goods at the Customer's expense or, if applicable, to demand assignment of the Customer's claims for return against third parties. The taking back or seizure of the reserved goods by the Contractor shall not constitute a withdrawal from the contract.

Property rights and copyrights to cost estimates, drawings, drafts and calculations prepared by the Contractor shall remain reserved. Such documents may neither be duplicated nor made accessible to third parties without the consent of the Contractor.

## **9. Prices and Terms of Payment**

The prices are net prices plus the statutory value added tax. Delivery and transport costs shall be charged separately, where applicable.

In the case of agreements containing delivery and performance periods of more than four months after conclusion of the contract, the Contractor shall be entitled to enter into negotiations on new price agreements.

Unless otherwise expressly agreed in writing, all services, including partial services, shall be paid for without any deductions within 14 days of their performance or invoicing. Unless otherwise agreed, a down payment of 25% of the order value shall be made upon conclusion of the contract.

The client shall only be entitled to offset or withhold payment in the case of counterclaims that have been legally established or are undisputed. Significant deteriorations in the Customer's creditworthiness shall entitle the Contractor to demand advance payments or the provision of security.

If the Customer fails to comply with the payment agreements made, the Contractor shall be entitled to set a grace period and, after its expiry, to withdraw from the contract and claim damages.

#### **10. Statute of Limitations**

Claims of the Customer due to a defect of the goods are excluded in case of sale of used goods. In the case of the purchase of new goods, claims of the Customer due to defects shall become time-barred within twelve months after their occurrence, unless the Contractor has fraudulently concealed the defect. The statutory limitation period for claims for damages by the Customer shall remain unaffected.

#### **11. Place of Performance, Place of Jurisdiction**

If the parties are merchants, legal entities under public law or special funds under public law, the place of performance for payment and delivery and the place of jurisdiction shall be the Contractor's registered office. The Contractor shall also be entitled to sue the Customer at the latter's registered office.

The law of the Federal Republic of Germany shall apply to the exclusion of the provisions of the UN Convention on Contracts for the International Sale of Goods (CISG).

#### **12. Amendments and Collateral Agreements**

Supplements, amendments and ancillary agreements must be in writing to be effective; the same shall apply to any waiver of this written form requirement. The precedence of individual contractual agreements between the parties after conclusion of the contract shall remain unaffected.

#### **13. Severability clause**

Should individual provisions of these GTC be or become invalid in whole or in part, or should there be a gap in the conditions, the validity of the remaining provisions shall not be affected.

In the event of the invalidity of a provision, the parties shall be obliged to cooperate in the creation of provisions by means of which an economic success which comes as close as possible to the invalid provision can be achieved in a legally effective manner.