

**General Terms & Conditions of Business**  
**AMADA WELD TECH GmbH - effective April 1, 2020**

**1. Scope of application**

1.1. The following terms and conditions of business shall apply exclusively – conflicting or deviating terms and conditions of the Purchaser are only binding if AMADA WELD TECH GmbH has accepted these in writing. The terms of delivery shall apply even if AMADA WELD TECH GmbH carries out the delivery in knowledge of conflicting or deviating terms and conditions of the Purchaser.

1.2. The terms and conditions of business of AMADA WELD TECH GmbH shall apply only in relation to entrepreneurs within the meaning of § 14 BGB (German Civil Code).

1.3. The contract is concluded if the offer of AMADA WELD TECH GmbH is accepted by the Purchaser in writing within three months after it has been issued (the decisive factor is the date of the offer). The offer and the acceptance can be produced by a machine and are valid without a signature.

1.4. With contractual acceptance of the offer as defined in point 1.3, the conditions of the agreement also become binding. Discounts and deferment of payment will no longer be given. The agreement may only be terminated after approval from AMADA WELD TECH GmbH, unless the right to terminate or revoke the agreement is permitted by a mandatory rule.

**2. Place of fulfilment and price**

2.1. The place of fulfilment for all supplies is the supplying factory of AMADA WELD TECH GmbH, unless it follows otherwise from the supply contract.

2.2. The prices of AMADA WELD TECH GmbH are “ex works”, unless otherwise agreed. Added to this are the applicable value-added tax at the statutory rate, the packaging and shipping costs and if applicable installation and training.

2.3. The prices do not include the taxes, fees, customs duties or similar charges arising outside the Federal Republic of Germany due to conclusion or carrying out of the transaction. If AMADA WELD TECH GmbH is subject to such charges, the Purchaser shall refund these costs.

2.4. AMADA WELD TECH GmbH does not accept bills of exchange. A payment by cheque only brings about the expiry of the reservation of title in accordance with clause 5 when the cheque has been cashed and irrevocably credited.

**3. Payment**

3.1. Payments are to be made free of charge and to arrive within the specified time at AMADA WELD TECH GmbH. The Purchaser is obliged to make the respective payments in accordance with the requirements of the order confirmation. Unless otherwise agreed, invoices are due immediately (after delivery) and are to be paid – net cash – at the latest within 30 days after the agreed delivery date and acceptance at AMADA WELD TECH GmbH. Default occurs from this point in time. The deduction of settlement discount requires specific agreement.

3.2. The following shall apply from an order value of 40,000.00 euros: 30% of the order value is due at the time of conclusion of the contract, i.e. after receipt of the order confirmation, 70% of the order value is due 30 days after delivery.

When ordering systems in accordance with jointly agreed specifications with the appropriate lead time, the following payment terms deviating from this shall expressly apply in % of the order value: 30 % advance payment on order confirmation being raised due 10 days after the invoice date, 30 % payment after completion of the design worksheets due 10 days after the invoice date, 30 % payment after the release has been completed at AMADA WELD TECH GmbH due 30 days after the invoice date and 10% payment after delivery and commissioning due 10 days after the invoice date , however not later than 45 days after delivery.

3.3. If the Purchaser is late in its payment, AMADA WELD TECH GmbH is entitled to claim damages caused by the delay amounting to 8 percentage points above the base interest rate.

3.4. The Purchaser shall only be entitled to set-off any amounts, provided that the counterclaim has been recognised by declaratory judgment, is ready for a decision, is undisputed or has been recognised by AMADA WELD TECH GmbH. Rights of retention of the Purchaser on the basis of counterclaims which do not have their origin in the same contract, but rather in other legal relationships are excluded.

**4. Delivery time and time of performance**

4.1. The date of dispatch of the order confirmation shall be decisive for the delivery and performance periods. Compliance with the deadlines for deliveries requires the punctual receipt of all documents to be supplied by the Purchaser, the required permits and releases, in particular of plans, as well as compliance with the agreed payment terms and other obligations by the Purchaser. If these conditions are not fulfilled in good time, the deadlines shall be extended by a reasonable period; this shall not apply if AMADA WELD TECH GmbH is responsible for the delay.

The Purchaser may only withdraw from the contract within the framework of the statutory provisions, insofar as the Supplier is responsible for the delay in the delivery. No change of the burden of proof to the detriment of the Purchaser shall arise from the foregoing provisions.

4.2. If the failure to comply with the deadlines is due to Acts of God, e.g. mobilisation, war, insurrection or similar events, e.g. strikes, lockouts, the deadlines shall be extended by a reasonable period.

4.3. Part deliveries and part performances shall be permissible if AMADA WELD TECH GmbH has a justified interest in them and these are reasonable for the Purchaser.

4.4. Any compensation claims of the Purchaser due to a delay in the delivery will be limited in the case of the ordinary negligence of AMADA WELD TECH GmbH to a maximum of 5 % of the agreed purchase price

4.5. The Purchaser is obliged to declare within a reasonable period of time on request of the Supplier whether he is withdrawing from the contract due to a delay in the delivery or insisting on the delivery.

4.6. If the dispatch or delivery are delayed at the request of the Purchaser by more than one month after notification of readiness for dispatch, the Purchaser can be charged storage charges amounting to 0.25% of the price of the items of the deliveries for each commenced month, not exceeding, however, a total of 5%. The contracting parties are free to furnish evidence of higher or lower storage costs.

## **5. Reservation of title**

5.1. The items of the deliveries (reserved goods) shall remain the property of AMADA WELD TECH GmbH until such time as all purchase price claims as well as ancillary claims against the Purchaser, which have already arisen as part of the business relationship at the point in time of the conclusion of the contract, have been satisfied. The Purchaser is therefore obliged to treat the reserved goods carefully and keep them in good condition.

5.2. Insofar as the realisable value of all items serving as collateral exceed the secured claims by 10 %, AMADA WELD TECH GmbH shall release a corresponding part of the security interests at the request of the Purchaser. An entitlement for release also arises, insofar as the estimated value of the reserved goods is at 150 % of the secured claims. AMADA WELD TECH GmbH is responsible for selecting the securities to be released.

5.3. During the existence of the reservation of title, the Purchaser is prohibited from pledging or collateral assignment and the resale is only permitted in the normal course of business and only subject to the condition that the reseller receives payment from his customer without delay in exchange for delivery or for his part only sells the reserved goods under reservation of title.

5.4. In the event of attachments, confiscations or other dispositions or interventions by third parties, the Purchaser must notify the Supplier immediately.

5.5. In the event of a considerable breach of duty of the Purchaser, particularly default in payment, the Supplier shall be entitled to withdrawal and taking back after the unsuccessful expiration of a reasonable period of time set to the Purchaser for performance; the statutory provisions on the dispensability of setting a deadline remain unaffected. The Purchaser shall then be obligated to effect the return.

5.6. Insofar as the Purchaser resells the goods which were delivered conditionally within his proper course of business, he already assigns to AMADA WELD TECH GmbH the claims for payment from the contract of sale between the Purchaser and his future customer in respect of the privileged property. The assignment is limited to the amount of the account receivable which has been agreed between the Purchaser and AMADA WELD TECH GmbH as the total invoiced amount. AMADA WELD TECH GmbH accepts the assignment. The Purchaser is entitled to collect this account receivable. The Purchaser must forward any collected amounts directly to AMADA WELD TECH GmbH until such time as the total invoiced amount has been satisfied. The parties hereby determine that the entitlement to payment of the purchase price takes precedence over an unpaid balance remaining with the Purchaser and is to be paid in advance.

5.7. Should the Purchaser default or make an application for the opening of insolvency proceedings or composition proceedings, AMADA WELD TECH GmbH shall be entitled to withdraw the resale and direct debit authority. In this case, the Purchaser is obliged to give all details and hand over all necessary documents to AMADA WELD TECH GmbH, in order that AMADA WELD TECH GmbH is able to collect the account receivable due from the customers itself.

5.8. Insofar as the Purchaser reprocesses the reserved goods delivered by AMADA WELD TECH GmbH, this is always done for AMADA WELD TECH GmbH. If the Purchaser also reprocesses the reserved goods of other suppliers, the privileged property to which AMADA WELD TECH GmbH is entitled extends to the reprocessed goods on a pro rata basis to the amount of the in each case outstanding unpaid accounts receivable (total invoiced amount + the statutory rate of value-added tax).

5.9. Insofar as the reserved goods delivered by AMADA WELD TECH GmbH are mixed indiscriminately with other objects/items, the Purchaser undertakes to grant joint ownership in the mixed object to AMADA WELD TECH GmbH, insofar as it is his property. The Purchaser holds this joint ownership in safe keeping for AMADA WELD TECH GmbH. Insofar as the ownership rights of third party suppliers are affected within the scope of the mixing or amalgamation, the respective accounts receivable are to be put in relation to one another on a pro rata basis. The co-ownership share to be provided to AMADA WELD TECH GmbH is then limited to the proportional shares calculated in this way.

## **6. Passing of risk**

6.1. The Purchaser always bears the forwarding risk, even if AMADA WELD TECH GmbH bears the shipping costs on a pro rata basis with the carrier, carries out the dispatch itself or has it carried out. The insurance of the consignments is a matter exclusively for the Purchaser and the cost shall be borne by him.

6.2. If the dispatch is delayed due to circumstances which AMADA WELD TECH GmbH is not responsible for, the risk shall pass to the Purchaser from the date of the notification of readiness for dispatch; in this case AMADA WELD TECH GmbH shall insure the delivery items at the request and the expense of the Purchaser. The charges for storage of the delivery items shall be borne by the Purchaser.

## **7. Material defects**

7.1. Warranty claims shall become statute- barred after 12 months following delivery.

7.2. The Purchaser must check the goods without delay after receipt and must notify AMADA WELD TECH GmbH immediately in writing of visible defects, at the latest within a period of 14 days. If the notification of defects has been wrongly made, the Supplier shall be entitled to demand reimbursement of the expenses incurred by him from the Purchaser.

7.3. If defects are notified, payments of the Purchaser may be withheld to an extent which is in an appropriate proportion to the material defects which have occurred. The right of retention shall come into being only with the receipt of a specified notification of defects at AMADA WELD TECH GmbH, which contains a detailed description of the defect.

7.4. First of all, the Supplier is to be given an opportunity for subsequent performance within a reasonable period of time. AMADA WELD TECH GmbH bears the required costs of supplementary performance as incurred at the place of fulfilment pursuant to Section 2.1. In cases where the goods were shipped to the buyer in accordance with the contract, travel expenses and allowances for the employees assigned for supplementary performance are to be reimbursed by the buyer. In case employees of AMADA WELD TECH GmbH travel to an operation of the buyer, but are unable to commence supplementary performance promptly upon arriving there, for reasons beyond the control of AMADA WELD TECH GmbH, the buyer shall reimburse AMADA WELD TECH GmbH for the costs incurred for wait time, in particular compensation for the employees during this time.

7.5. If the subsequent performance fails, the Purchaser may withdraw from the contract or reduce the payment.

7.6. There shall be no claims based on defects in the case of normal wear and tear or damage which occurs after the passing of risk as a result of incorrect or negligent handling, excessive strain, unsuitable equipment, defective construction work, unsuitable subsoil or which occur on account of special outside influences which are not foreseen by this contract, as well as in the case of software errors which cannot be reproduced. If improper modifications or repair work are carried out by the Purchaser or by third parties, there shall also be no claims based on defects for such modifications or repair work or the resultant consequences.

7.7. Claims of the Purchaser against the Supplier under a right of recourse in accordance with § 478 BGB (recourse of the entrepreneur) exist only insofar as the Purchaser has not made any agreements with his customer beyond the statutory claims based on defects. The Purchaser is obliged to obtain an offer from AMADA WELD TECH GmbH in the case of replacement purchase or remedial work by third parties and – in the event that he commissions a third party – to forward copies to AMADA WELD TECH GmbH of the contract documents (offer, invoice) and defect rectification protocols. The claim for compensation of expenses against AMADA WELD TECH GmbH shall not include any profit of the Purchaser from his own undertaking of warranty measures, in particular subsequent performance.

7.8. In other respects, clause 9 shall apply to claims for compensation in connection with warranty claims.

## **8. Claims for damages and claims for compensation of expenses**

8.1. Any claims for damages and claims for compensation of expenses of the Purchaser (hereinafter referred to as: claims for compensation), for whatever legal reason, in particular because of a breach of duties from the contractual obligation and from tortious acts are excluded.

8.2. This shall not apply in cases of wilful intent or gross negligence, in cases of claims because of injury to life, body or health, in cases of claims from the German Product Liability Act or in accordance with § 478 BGB, as well as in the case of an infringement because of a breach of material contractual obligations. The claim for damages for a breach of material contractual obligations is, however, limited to the foreseeable loss or damage which is typical for this type of contract, unless there is wilful intent or gross negligence or if liability exists because of the injury to life, body or health. No change of the burden of proof to the detriment of the Purchaser shall arise from the foregoing provisions.

This shall also not apply in those cases, in which an alternative provision is provided for in these General Terms and Conditions of Business.

8.3. Insofar as the Purchaser is entitled to claims for compensation in accordance with this clause 8., these shall become statute barred on the expiry of the prescription period applicable for claims for material defects in accordance with clause

7.1. In the case of claims for compensation in accordance with the German Product Liability Act, the statute of limitations shall apply.

### **9. Supplies and services by third parties**

AMADA WELD TECH GmbH may also have its supply and service commitments carried out by third parties, without the rights of the Purchaser against AMADA WELD TECH GmbH being encroached upon as a result.

### **10. Amendment of the contract**

10.1 No agreements other than those stipulated in the order confirmation of AMADA WELD TECH GmbH and in the contract on supplies and services or in these General Terms and Conditions of Business have been made.

10.2 Any rescissions, amendments or supplements of the agreed conditions must be made in writing. This applies also to an agreement with which the requirement for the written form is removed.

### **11. Place of jurisdiction and applicable law**

11.1. The permanent place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship, if the Purchaser is a businessman, is the registered office of the Supplier. The Supplier is, however, also entitled to institute legal proceedings at the registered office of the Purchaser. The registered office of the Supplier is the place of jurisdiction even if the Purchaser moves his registered office or usual place of abode from the Federal Republic of Germany after conclusion of the contract or this is unknown at the time of legal proceedings being instituted.

11.2. The legal relationships in connection with this contract shall be governed by German substantive law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

### **12. Legal validity of the contract**

The contract shall remain binding in its remaining parts, even in the event of the legal invalidity of individual provisions. This does not apply if adhering to the contract would represent an unreasonable hardship for one party.

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