

# General Terms and Conditions

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## General Terms and Conditions

- A. Application of the Terms and Conditions of Westfalia
- B. Purchasing and Order Terms
- C. General Service Terms

## Special Clause to the BDSG:

The contracting partners of Westfalia authorise the latter to store and process personal data within the framework of the BDSG, waiving separate notification, as far as this is necessary for the performance of the contractual relationship.

# General Terms and Conditions

## A. Application of the Terms and Conditions of Westfalia

### A.1 Inclusion

These terms and conditions shall apply to all business relationships between Westfalia and its contracting partners, even if individual transactions do not specifically refer to the terms and conditions, if the contracting partner is an entrepreneur (§ 14 of the German Civil Code (*Bürgerliches Gesetzbuch*; BGB)), a legal entity under public law or a special fund under public law.

These terms and conditions refer to any partners that do business with Westfalia on the supplier and/or customer side as contracting partners.

### A.2 Defence clause

These terms and conditions shall apply always and exclusively. Any deviating, conflicting, or supplementary general terms and conditions of the contracting partner shall only become an integral part of the contract if and as far as Westfalia has explicitly agreed to their application in writing.

Individual agreements made with the contracting partner from case to case (including any ancillary agreements, supplements, and amendments) shall take precedence over these terms and conditions in any case. The content of such agreements shall be governed by a written contract or written confirmation from Westfalia, subject to proof to the contrary.

### A.3

References to the applicability of statutory provisions are for clarification purposes only. Therefore, the statutory provisions shall apply even without such clarification except if they are directly amended or explicitly excluded in these terms and conditions.

## B. Purchasing and Order Terms

### B.1 Content of the contract/no assignment

#### B.1.01

These purchasing and order terms of Westfalia shall apply exclusively to any orders placed by Westfalia.

#### B.1.02

Any orders placed and purchases made by Westfalia shall – as far as these terms and conditions do not govern the matter – be settled exclusively based on the statutory provisions.

#### B.1.03

Any offers made by the supplier or other contracting partner of Westfalia shall require explicit written acceptance by Westfalia.

#### B.1.04

The supplier must not transfer any rights and obligations arising from this order to any third parties without the written consent of Westfalia. This shall not apply to the advance assignment of the purchase price claim within the scope of an extended reservation of title.

### B.2 Prices

#### B.2.01

The prices include the costs of packaging and transport insurance.

#### B.2.02

The prices shall also include any other costs of the supplier.

#### B.2.03

Ancillary services of the contracting partner shall not be remunerated separately.

# General Terms and Conditions

## B.3 Delivery time

### B.3.01

Agreed delivery dates shall be fixed dates and must be complied with.

### B.03.02

If the supplier realises that it will not be able to meet agreed deadlines and dates, it shall notify Westfalia of this in writing without undue delay.

### B.03.03

If there is any delay in delivery, Westfalia shall be due the statutory claims – rescission and compensation for damages instead of performance – following unsuccessful expiration of a reasonable period of time.

## B.4 Warranty

### B.4.01

Westfalia's contracting partner shall provide warranty and compensation at the scope and for the duration stipulated by law. The following provisions in Section B.4 shall apply in any other respects.

### B.4.02

Westfalia's obligations to inspect and give notice of defects shall be subject exclusively by § 377 of the German Commercial Code (*Handelsgesetzbuch*; HGB).

### B.4.03

In case of defects, Westfalia may assert the statutory claims at its own discretion. If subsequent performance is impossible for Westfalia's contracting partner, Westfalia may, at its own discretion, assert any further rights in respect of defects.

### B.4.04

Subsequent performance shall be performed as quickly as possible in consultation with Westfalia and under consideration of Westfalia's operational concerns.

### B.4.05

If subsequent performance does not take place within a reasonable period of time or fails twice, Westfalia shall be due the rights of withdrawal, reduction, compensation for damages, and/or reimbursement of expenses.

### B.4.06

A warranty period of two years from delivery of the object shall apply to defects. § 438 (1) nos. 1 and 2, (3) BGB shall not be affected by this.

### B.4.07

All costs of supplementary performance shall be borne by the supplier, including the costs for e.g., return, disassembly, transport, travel, labour, material, planning, documentation services incurred during supplementary performance.

### B.4.08

As far as any costs are incurred by Westfalia due to the subsequent performance, Westfalia shall have the right to invoice them at the customary local prices.

## B.5 Payment

### B.5.01

Payments by Westfalia shall be made subject to subsequent invoice verification within 14 days of receipt of the invoice with a 3% discount or within 30 days without deduction

### B.5.02

If any goods from deliveries of the contracting partner arrive early, the invoice shall be valued at the delivery date contractually agreed with Westfalia. The date of invoice receipt shall be considered the value date.

### B.5.03

In case of defective goods or services or partial delivery by the contracting partner in breach of contract, the invoice shall be valued at the date of freedom from defects or complete delivery. The date of invoice receipt shall be considered the value date.

# General Terms and Conditions

## B.6 Offsetting

The supplier agrees that Westfalia may offset any of its claims against the supplier or its subsidiaries and affiliates.

## B.7 Place of performance/place of jurisdiction/choice of law

### B.7.01

The place of performance for all deliveries and services shall be the place of destination designated by Westfalia.

### B.7.02

The place of jurisdiction for any disputes arising from or in connection with the contractual relationship between the contracting partner and Westfalia is the AG Delbrück and the LG Paderborn, depending on the amount in dispute.

In the above case, Westfalia shall also have the right to sue the other contracting partner at its respective place of business.

### B.7.03

The law of the Federal Republic of Germany shall apply to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods (CISG).

## C. General Service Terms

### C.1 Order confirmation/contract content/communication channels/consultation

#### C.1.01

The following provisions shall apply if Westfalia makes any deliveries or renders any services:

#### C.1.02

The content of the respective contract shall be subject to the written order confirmation of Westfalia, if applicable, in conjunction with the list of services drawn up by Westfalia. Verbal agreements in connection with the conclusion of contracts made with employees of Westfalia who are not authorised representatives shall also require written confirmation of Westfalia in order to be effective.

This clause shall not apply to any arrangement made with a person having unlimited power of representation.

#### C.1.03

The customer shall provide Westfalia with all information and documents that are necessary or useful for the performance of the contractually agreed services. If any performance specifications are drawn up and submitted to the customer for review and approval, these performance specifications shall define the scope of services bindingly for both parties.

#### C.1.04

Property details concerning Westfalia's products and services shall only be attributable to Westfalia if such statements originate from Westfalia or are made on Westfalia's explicit behalf, or explicitly authorised by Westfalia, or are public statements that Westfalia was aware or should have been aware of and that it did not distance itself from within a reasonable period of time. Assistants of Westfalia within the meaning of § 434 (1) BGB shall not include any authorised dealers and customers of Westfalia who act as resellers. Sufficient correction of property details within the meaning of § 434 (1) BGB may be made in any case on Westfalia's website at address [www.westfalia-spielgeraete.de](http://www.westfalia-spielgeraete.de).

#### C.1.05

Property details attributable to Westfalia that include measurable values shall be understood with a tolerance customary in the industry.

#### C.1.06

Orders and execution requests shall be submitted by the customer in text form exclusively to fax numbers or email addresses provided to the customer for this purpose.

#### C.1.07

If the customer chooses communication channels deviating from item C.1.06, the customer shall bear the risk of timely processing.

# General Terms and Conditions

## C.1.08

Westfalia shall owe consultancy services only based on a special written contract and against separate remuneration.

## C.2 Permanent rights/trademarks/references

### C.2.01

Westfalia reserves the copyright to project drawings, models, plans and the like. Such objects and calculations shall remain the property of Westfalia and may not be reproduced or made available to third parties.

### C.2.02

Westfalia shall have the right to apply its own company and brand marks. The customer is prohibited from removing such marks affixed by Westfalia.

### C.2.03

Westfalia shall have the right to publicly list the customer as a reference customer for advertising purposes and, in doing so, to publish the customer's name, address and a photograph of the delivered object. The customer may object to this use at any time in writing to Westfalia.

## C.3 Delivery/transfer for risk/insurance

### C.3.01

Delivery shall be ex warehouse. The goods shall be shipped to a different destination (*distance sale*) at the customer's request and expense. Unless otherwise agreed, Westfalia shall have the right to determine the mode of dispatch (in particular the transport company, shipping route, packaging).

### C.3.02 Place of performance

The place of performance for the delivery and any subsequent performance shall be Westfalia's premises. Westfalia shall bear any transport costs required for this to Westfalia's premises.

### C.3.03

The risk of accidental loss and accidental deterioration of the goods shall pass at the latest when the goods are handed over to the customer or (in the case of *distance sale*) when the goods are handed over to the carrier or other person designated to make the delivery. As far as acceptance has been agreed, this shall be decisive for the transfer of risk. The statutory provisions of the law on contracts for work and services shall also apply mutatis mutandis to any agreed acceptance in any other respects. Handover or acceptance shall be deemed equivalent if the customer is in default of acceptance.

### C.3.04 Insurance clause

The delivery shall only be insured at the customer's request and then at the customer's expense.

## C.4 Delivery times and delay in delivery

### C.4.01 Definition

Delivery date shall be a point in time, be it a specific day or a calendar week or the like, on which the delivery or service is to take place.

Delivery period shall be the period of time within which a delivery or service must be made.

Delivery time shall be the generic term for delivery dates and delivery periods.

### C.4.02

All delivery times shall be subject to the availability of the service at Westfalia. If the performance is not available (non-availability of the performance), Westfalia shall inform the customer of this without undue delay while at the same time informing the customer of the expected new delivery time. If the service is not available even within the new delivery time, Westfalia shall have the right to withdraw from the contract wholly or in part; any consideration already paid by the customer shall be refunded without undue delay. A case of non-availability of performance within this meaning shall be deemed to be, in particular, the failure of Westfalia to obtain supplies from its suppliers in time if Westfalia has entered into a congruent hedging transaction, neither Westfalia nor its supplier is at fault or Westfalia is not obligated to procure supplies in the individual case.

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## C.4.03

Any agreed delivery periods shall apply ex works, unless explicitly agreed otherwise. Such delivery periods shall commence at the time stipulated in the order, but no earlier than when the documents, approvals, call-offs, and shipping addresses to be procured by the customer are available, all details of the order have been clarified, and the customer has made agreed down payments or provided collateral.

## C.4.04

As far as a delivery period has been agreed, this shall be extended appropriately if the customer is in arrears with the provision of documents, approvals, shipping address notifications, down payments, or collateral to be procured by it.

## C.4.05

If any delivery date has been agreed, it shall be postponed appropriately if the customer is in arrears with the provision of documents, approvals, shipping address notifications, down payments, or collateral to be procured by it.

## C.4.06

Delivery dates shall also be postponed, or delivery periods extended accordingly if the preconditions for the services to be provided by Westfalia, which the customer has to provide itself or through third parties, are not met in time.

## C.4.07

The delivery period shall not commence until Westfalia has confirmed the change if the customer requests any changes to the order after the order has been confirmed. The delivery date shall be postponed accordingly.

## C.4.08

The delivery time shall be reasonably extended if there are any unforeseen hindrances that Westfalia cannot avert in spite of reasonable care in the circumstances of the case, e.g., a total or partial failure of subcontractors for which Westfalia is not responsible. Westfalia may withdraw from the contract in such a case.

## C.4.09

Westfalia's default in delivery shall be determined in accordance with the statutory provisions. A reminder by the customer shall be required in any case, however.

## C.4.10 Flat-rate compensation

The customer may demand flat-rate compensation for the damage caused by a delay in delivery on the part of Westfalia. The flat rate for damages shall be 0.5% of the net price (delivery value) per completed calendar week of the delay, but no more than 5% of the delivery value of the goods delivered late in total. Westfalia reserves the right to prove that the customer has suffered no loss at all or only a significantly lower loss than the above flat rate.

## C.4.11 Disclaimer in conjunction with C.10.02

The customer's rights in accordance with item C.10.02 of these General Terms and Conditions of Performance and the statutory rights of Westfalia, in particular in case of an exclusion of the obligation to perform (e.g., due to impossibility or unreasonableness of performance and/or subsequent performance), shall remain unaffected.

## C.4.12

Westfalia reserves the right to invoice the respective contractually agreed shipping costs at 50% as a contractual claim for damages if the contracting partner fails to meet an agreed delivery date without cancelling at least 4 working days in advance. The claim shall lapse if the non-appearance/late cancellation is demonstrably not culpably caused.

The contracting partner reserves the right to prove that Westfalia has not suffered any damage or that the damage is significantly less than the above flat rate.

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## C.4.13

If the contracting partner fails to cancel an agreed installation date without giving at least 7 working days' notice, Westfalia reserves the right to charge 50% of the respective contractually agreed costs for shipping and installation as a contractual claim for damages. The claim shall lapse if the non-appearance/late cancellation is demonstrably not culpably caused.

The contracting partner reserves the right to prove that Westfalia has not suffered any damage or that the damage is significantly less than the above flat rate.

## C.5. Partial deliveries

### C.5.01

Partial deliveries shall be permissible at a scope reasonable for the customer.

### C.5.02

If Westfalia makes use of its right of partial delivery, payments for goods already delivered cannot be withheld for this reason.

## C.6 Prices

### C.6.01

In the absence of any agreement to the contrary, the prices shall apply ex works or ex warehouse, excluding packaging. Any customs duties, fees, taxes, and other public charges shall be borne by the customer.

### C.6.02

In the case of a distance sale, the customer shall additionally bear the transport costs ex works or ex warehouse and the costs of any transport insurance requested.

### C.6.03

As far as any packaging arises, Westfalia shall pack in accordance with the existing regulations and proceed in accordance with § 15 of the Packaging Act (*Verpackungsgesetz; VerpackG*).

### C.6.04

The prices shall be exclusive of the applicable value added tax; this shall apply accordingly to any costs and interest.

### C.6.05

Neither a sales nor a cash discount shall be granted on separately invoiced freight costs and packaging costs, and they shall also be disregarded in the calculation of any agreed bonuses.

## C.7 Payment terms

### C.7.01

The provisions of the Value Added Tax Act (*Umsatzsteuergesetz; UStG*) shall apply to down payments.

### C.7.02

Receipt of the payment on the account of Westfalia shall be decisive for the timeliness of the payment.

### C.7.03

Payments shall be due immediately unless otherwise agreed.

### C.7.04

The customer shall enter default at the latest 14 days after receipt of the invoice and delivery or acceptance of the goods.

### C.7.05

Interest shall be charged on the purchase price at the statutory default interest rate applicable at the time if the customer enters default of payment. Westfalia reserves the right to claim further default damage.

### C.7.06

The place of performance for payments shall be the registered office of Westfalia.

### C.7.07

The customer must only set off claims that are due and not subject to a defence.

# General Terms and Conditions

## C.7.08

The customer shall not have any right of retention, except in cases of C.7.07.

Furthermore, the customer's rights in accordance with § 320 BGB shall be preserved as long as and as far as Westfalia has not met its warranty obligations.

## C.7.09

If it becomes apparent after the conclusion of the contract that Westfalia's claim to the purchase price is jeopardised by the customer's inability to pay (e.g., by its filing for insolvency proceedings), Westfalia shall have the right to refuse performance in accordance with the statutory provisions and – if necessary after setting a deadline – to withdraw from the contract (§ 321 BGB). In the case of contracts for the manufacture of objects that cannot be sold otherwise (bespoke products), Westfalia may declare rescission at once; the statutory provisions on dispensing with the setting of a grace period shall not be affected by this.

In this case, Westfalia may demand flat-rate compensation for damages, specifically 25% of the non-executed order sum without any special evidence; the customer reserves the right to prove that Westfalia has suffered no damage or less damage than the above flat rate. Westfalia shall also have the right to demand compensation for any damage exceeding the flat rate.

## C.8 Obligation to examine and give notice of defects

### C.8.01

Claims for defects on the part of the customer shall require that it has complied with its statutory obligations to inspect and give notice of defects (§§ 377, 381 HGB) as well as the provisions in this section C.8.

### C.8.02

Westfalia's deliveries, including drawings, implementation plans and the like, shall be inspected by the customer without undue delay upon handover, at the latest within 14 days, to ensure that they are fit for use and in order.

### C.8.03

Any obvious defects must be reported to Westfalia without undue delay, but no later than within 14 days of arrival at the place of destination, stating the specific complaints in detail.

### C.8.04

The customer must also report any hidden defects without undue delay after they are discovered, but no later than within 14 days after discovery of the defect.

## C.9 Claims for defects by the customer (warranty)

In these terms and conditions, warranty shall mean: Claims for defective performance due to delivery of a defective object or production of a defective work.

### C.9.01 Warranty clause

Limitation of liability in this section C.9. shall not affect the special statutory provisions in the case of final delivery of the object to a consumer (supplier recourse pursuant to §§ 478, 479 BGB).

### C.9.02

Westfalia's liability for the non-notified defect shall be excluded if the customer does not comply with the inspection and notification obligations according to section C.8.

### C.9.03

The general limitation period for claims arising from defects of material and title shall be 12 months from delivery or, if acceptance has been agreed, from acceptance.

The special statutory provisions on limitation (in particular § 438 (1) nos. 1 and 2, (3), §§ 444, 479 BGB or § 634a (1) nos. 2 and 3, (3) BGB) shall not be affected.



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## C.9.04

The limitation period of 12 months shall also apply to any contractual and non-contractual claims for damages based on a defect in the object. However, this shortening of the limitation period shall not apply

- as far as the damage is caused by intent or gross negligence on the part of Westfalia or its representatives or vicarious agents;
- in case of damage resulting from injury to life, limb, or health;
- in case of default, as far as a fixed delivery date was agreed;
- in case of fraudulent concealment of a defect;
- in case of the assumption of a guarantee and/or procurement or manufacturer's risk within the meaning of § 276 BGB by Westfalia;
- in cases of mandatory statutory liability, in particular under the Product Liability Act

(*Produkthaftungsgesetz*). The above provisions shall not be associated with any reversal of the burden of proof at the expense of the customer.

## C.9.05

If the warranty period is suspended or interrupted by work performed or replacement deliveries made by Westfalia, such suspension or interruption shall only extend to the functional unit affected by the replacement delivery or rectification.

## C.9.06

If the customer has any right to subsequent performance, Westfalia shall first decide whether subsequent performance is to be effected by remedying the defect (rectification) or by delivering a defect-free object (replacement). The right to refuse subsequent performance under the statutory preconditions remains unaffected.

## C.9.07

No liability shall be accepted for any damage for which Westfalia is not responsible. This shall include, among other things, any damage that has occurred for the following reasons: Unsuitable or improper use, defective assembly, or commissioning by the customer or by third parties, natural wear and tear, defective or negligent handling, unsuitable operating materials or replacement materials, or chemical influences, provided they are not the fault of Westfalia.

## C.9.08

Westfalia shall not provide any warranty for components provided by the customer. The customer alone shall be responsible for the suitability and quality of such components, unless explicitly agreed otherwise.

## C.9.09

In case of non-observance of the operating and maintenance instructions by the customer, it shall be assumed that any damage incurred is due to this. In this case, the customer shall bear the burden of presentation and proof to the contrary.

## C.9.10

Westfalia shall have the right to make the subsequent performance dependent on the customer paying the purchase price due. However, the customer shall have the right to retain a reasonable part of the purchase price in relation to the defect.

## C.9.11

Work on any objects delivered by Westfalia or any other services rendered by Westfalia shall only be deemed work to remedy defects or rectify defects

- as far as the defectiveness has been explicitly acknowledged by Westfalia,
- or as far as notices of defects are proven,
- and as far as these proven notices of defects are justified.

If these preconditions are not met, such work shall be considered a special service.

## C.9.12

Westfalia shall also provide improvement or replacement deliveries as special services if they are not explicitly provided in recognition of a legal obligation.

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## C.9.13

Any expenses necessary for inspection and subsequent performance, in particular transport, travel, labour, and material costs (not including removal and installation costs) shall be borne by Westfalia if a defect is actually present. Otherwise, Westfalia may demand reimbursement of the costs incurred as a result of the unjustified request to remedy the defect (in particular inspection and transport costs) from the customer, except if the lack of defectiveness was not evident to the customer.

However, the customer shall bear any additional costs arising from the fact that any warranty measures to be rendered by Westfalia involve transport costs, travel expenses and other expenses which exceed the borders of Germany if any equipment delivered by Westfalia is installed or operated outside the customer's principal place of business, even though the relevant contract was concluded with a branch or principal place of business of the customer located in Germany.

## C.9.14

The customer shall give Westfalia the necessary time and opportunity to perform repairs and replacement deliveries owed as warranty. The customer shall only have the right to rectify the defect directly or to have it rectified by third parties and to demand reimbursement of the arising costs from Westfalia in urgent cases of danger to operational safety and to prevent disproportionate damage, in which case Westfalia must be notified immediately – if possible in advance – or if Westfalia is in default with the rectification of a defect.

## C.9.15

If Westfalia procures any third-party services on behalf of and for the account of the customer, the third party alone is liable for the warranty. Westfalia shall not provide any advice on the selection of third-party services by the customer unless otherwise agreed. If the customer requests any advice in this respect, this shall only be provided based on a separate agreement to be concluded and against remuneration.

## C.9.16

The customer may withdraw from the contract if the supplementary performance has failed or a reasonable deadline to be set by the customer for the supplementary performance has expired unsuccessfully (§ 323 (1) or § 281 (1) BGB), can be dispensed with according to the statutory provisions (§ 323 (2) or § 281 (2) BGB), or may be refused by Westfalia in accordance with § 439 (3) BGB or § 635 (3) BGB, or is unreasonable for the customer. However, an insignificant defect shall not lead to any right of withdrawal.

## C.9.17

The customer shall only be due a reduction of the price if Westfalia agrees to this.

## C.9.18

Claims of the customer for damages or reimbursement of expenses made in vain shall also be excluded in case of defects in accordance with item C.10.01 and exist only in the cases of item C.10.02.

## C.10 Other liability

### C.10.01

Unless otherwise stipulated in these general terms and conditions, any claims for damages and reimbursement of expenses by the customer against Westfalia for any legal reason shall be excluded, subject to the following item C.10.02. This shall also apply in particular to claims for damages in tort (e.g., § 823 BGB).

As far as liability is excluded or limited, this shall also include the personal liability of Westfalia's employees, workers, staff, representatives, and vicarious agents.

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## C.10.02

The limitations of liability in these general terms and conditions do not apply

- as far as the damage is caused by intent or gross negligence on the part of Westfalia or its representatives or vicarious agents;
- in case of a culpable breach of essential contractual obligations, in which case the compensation for damages shall be limited to the typical contractual damage foreseeable at the time of conclusion of the contract. Essential contractual obligations shall be obligations that protect the legal positions of the contracting partner that are material to the contract and that the contract is to grant to the contracting partner in accordance with its content and purpose; material contractual obligations shall also be obligations the fulfilment of which makes proper performance of the contract possible in the first place and the fulfilment of which the customer has regularly relied on and may rely on;
- in case of damage resulting from injury to life, limb, or health;
- in case of default, as far as a fixed delivery date was agreed;
- in case of fraudulent concealment of a defect;
- in case of the assumption of a guarantee and/or procurement or manufacturer's risk within the meaning of § 276 BGB by Westfalia;
- in cases of mandatory statutory liability, in particular under the Product Liability Act

(Produkthaftungsgesetz). The above provisions shall not be associated with any reversal of the burden of proof at the expense of the customer.

## C.10.03

The customer must only withdraw from or terminate the contract due to a breach of duty that does not consist of a defect if Westfalia is responsible for the breach of duty. Free termination by the customer (in particular according to §§ 650, 649 BGB) shall be excluded. The statutory requirements and legal consequences shall apply in all other respects.

## C.11 Call-off orders

### C.11.01

Westfalia shall have the right to demand payment for any orders on call that are not called off within 4 weeks after the end of the call-off period.

### C.11.02

This shall apply accordingly to call-off orders without a specially agreed call-off period if 4 months have elapsed without a call-off since receipt of Westfalia's notification in text form that the goods are ready for dispatch.

## C.12 Storage/default of acceptance

### C.12.01

Westfalia shall not be obligated to insure stored goods in case of default in acceptance, unless otherwise agreed in an individual contract.

### C.12.02

In the case of storage at Westfalia, Westfalia may charge 0.5% of the invoice amount per month, but at least € 30.00 and a further € 25.00 per month for every other full cubic metre of goods. The customer shall have the right to prove that the claim has not arisen or has arisen at a lesser scope.

### C.12.03

The two items above shall also apply if that dispatch is delayed for more than two weeks beyond the notified readiness for dispatch at the customer's request.

### C.12.04

If the customer does not accept the ordered goods in spite of a deadline being set, Westfalia shall have the right to demand 25% of the agreed price as a flat-rate settlement, irrespective of proof of actual damage, unless the customer proves that there is no damage or that the damage is less.

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## C.13 Retention of title

### C.13.01

Westfalia (we) retain title to the delivered object until full payment of all claims arising from the delivery contract. This shall also apply to any future deliveries, even if we do not always explicitly refer to this. Westfalia shall have the right to take back the purchased object/the work if the purchaser acts in breach of contract.

### C.13.02

As long as title has not yet passed to it, the purchaser shall be obligated to treat the purchased object/work with care.

In particular, it shall be obligated to insure it adequately at its own expense against theft, fire, and water damage at replacement value.

If any maintenance and inspection work must be performed, the purchaser shall perform this in time at its own expense. As long as title has not yet passed, the purchaser must inform us without undue delay in writing if the delivered object is seized or exposed to other interventions by third parties. As far as the third party is not in a position to reimburse us for the in- and out-of-court costs of an action in accordance with § 771 of the Code of Civil Procedure (*Zivilprozessordnung*, ZPO), the purchaser shall be liable for the loss incurred by us.

### C.13.03

The purchaser shall have the right to resell the goods subject to retention of title in the normal course of business.

The purchaser hereby assigns any claims against its customer from resale of the goods subject to retention of title to us in the amount of the final invoice amount agreed with us (including value added tax). This assignment shall apply no matter if the purchased object was resold without or after processing.

The purchaser shall remain authorised to collect the claim even after the assignment. Our right to collect the claim directly shall not be affected by this. However, we shall not collect the claim as long as the purchaser meets its payment obligations from the proceeds collected, is not in default of payment, and, in particular, no application for the opening of insolvency proceedings has been filed or there is no cessation of payments.

### C.13.04

The processing or transformation of the purchased object by the purchaser shall always be performed in our name and on our behalf. In this case, the purchaser's expectant right to the purchased object shall continue in the transformed object. If the purchased object is processed with any other objects that do not belong to us, we shall acquire joint title in the new object at the ratio of the objective value of our purchased object to the other processed objects at the time of processing. This shall apply accordingly in case of blending. If blending takes place in such a way that the object of the purchaser is to be considered the main item, it shall be deemed agreed that the purchaser shall transfer shared title to us on a prorated basis and that it shall keep the sole title or shared title thus created for us. In order to secure our claims against the purchaser, the purchaser also assigns to us any claims that accrue to it against a third party due to the combination of the goods subject to retention of title with a property; we hereby accept this assignment.

### C.13.05

We commit to releasing the collateral due to us at the purchaser's request as far as their value exceeds the claims to be secured by more than 20%.

### C.13.06

If and as far as the goods taken back can be sold by Westfalia as new elsewhere in the normal course of business, the customer shall owe 10% of the invoice value of the goods as take-back costs without further proof. If sale as new in the ordinary course of business is not possible, the customer shall owe a further 30% of the value invoiced for the goods for loss in value without further proof. The customer retains the right to prove that Westfalia has suffered no damage at all or that the damage is lower than the stated percentages in either case.

## C.14 Place of performance and fulfilment

### C.14.01

The place of performance and fulfilment for the services to be rendered by Westfalia shall always be the registered office of Westfalia.

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## C.14.02

The place of performance for deliveries shall be the registered office of Westfalia, in particular also if Westfalia takes care of the transport directly.

## C.15 Safeguarding obligations

### C.15.01

The customer shall be obligated towards Westfalia to ensure at its own expense that the construction site is suitably secured against access by unauthorised persons (in particular children). This is possible, among other things, by erecting construction site fences and other barriers.

### C.15.02

If the customer does not comply with this obligation in time by the agreed start of the work by Westfalia, Westfalia may have this safeguarding performed by third parties at the customer's expense and as far as refuse to take up or continue the planned work. The customer shall also reimburse Westfalia for any costs incurred as a result of this (travel costs, standstill costs of the machines, etc.).

### C.15.03

The customer must also ensure that the play equipment installed by Westfalia cannot be entered during non-working hours, nighttime or after Westfalia has left the construction site until the suitable ground material has been filled in, until any transport aids that may still be present have been removed and in particular during the curing time of the foundations. The customer shall indemnify Westfalia against any claims by third parties arising from any of the above breaches of duty.

## C.16 Headings/definition

### C.16.01

All headings in the Westfalia terms and conditions are inserted for ease of reading only and have no bearing on the meaning and interpretation of the individual provisions.

### C.16.02

Written declarations of intent and knowledge within the meaning of the Westfalia terms and conditions shall also include any declarations transmitted in text form (i.e., by fax or e-mail, for example).

## C.17 Jurisdiction and substantive law

### C.17.01

The place of jurisdiction for any disputes arising from or in connection with the contractual relationship between the contracting partner and Westfalia is the AG Delbrück and the LG Paderborn, depending on the amount in dispute.

Westfalia shall have the right to sue the other contracting partner at its respective place of business as well in the above case.

### C.17.02

The law of the Federal Republic of Germany shall apply to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods (CISG).

The prerequisites and effects of retention of title in accordance with section C.13. shall be subject to the law of the respective location of the object as far as the choice of law made in favour of German law is inadmissible or ineffective thereafter.

## C. 18 Final provision

If any provision of these terms and conditions or any provision subsequently incorporated in them is or becomes invalid, void, or unenforceable, wholly or in part, or if any gap in these terms and conditions becomes evident, this shall not affect the validity of the remaining provisions. § 306 (2) and (3) BGB shall not be affected.