

General Terms and Conditions of Delivery of wtec GmbH

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Article 1 Validity

(1) All contracts of sale about the deliveries of goods by wtec GmbH (referred to as the „seller“ hereinafter) of Dornbachstrasse 1a, 61352 Bad Homburg vor der Höhe, are made solely on account of these General Terms and Conditions of Delivery, unless the parties have expressly agreed something divergent.

(2) The buyer's general terms and conditions of business or those of a third party are inapplicable, even if the seller does not contradict or oppose their validity separately in individual cases. No agreement to the validity of any such general terms and conditions of business can be inferred or deduced, even if the seller refers to a letter that contains the buyer's general terms and conditions of business or those of a third party, or such a letter refers to them.

Article 2 Quotation and conclusion of the contract

(1) All of the seller's quotations are provisional, subject to change without notice and offered without engagement, insofar as they are not expressly identified as binding or they do not contain a specific time limit for acceptance. The seller can accept the purchase orders or other orders within fourteen days after receiving them: they are accepted (conclusion of the contract) by means of the seller expressly acknowledging them in writing (acknowledgement of order).

(2) The seller's verbal promises are not legally binding and any verbal arrangements or agreements that are made between the contracting parties will be replaced by the written contract, insofar as it does not expressly arise from them in each case that they continue to apply bindingly.

(3) The written form is needed for effectively supplementing and revising the agreements that are made, including these General Terms and Conditions of Delivery. Transmission via telecommunication - especially by fax or e-mail - suffices for safeguarding the written form, insofar as the copy of the signed declaration will be transmitted.

(4) The seller's information about the delivery item or performance (e.g., weights, dimensions, practical values, loading capacity, dimensional tolerances and technical data), as well as our descriptions of the same information (e.g., drawings and illustrations) are only approximately decisive, insofar as precise conformity is not a prerequisite for usability concerning the contractually foreseen purpose: they are not guaranteed qualities but descriptions

or identifications of the delivery or performance instead. Commercially customary divergences and other divergences that take place on account of legal regulations, or which represent technical improvements, as well as substituting components with equivalent parts, are permissible, insofar as they do not adversely affect the usability of the contractually foreseen purpose.

Article 3 Prices and payment

(1) The prices apply to the scope of performance and delivery that is described in the acknowledgement of order. Extra services or special services will be charged separately. The prices are understood to be quoted in EUROS ‚ex-works‘, plus packaging, statutory value-added tax, customs duties in the case of exported deliveries, as well as fees and other public fiscal charges. The seller will not take back the transport packaging and all other packaging that is provided according to the Packaging Ordinance because they become the buyer's property.

(2) The seller's list prices that are valid when the delivery is made apply in each case (less an agreed percentage discount or a fixed discount respectively), insofar as the agreed prices are based upon the seller's list prices and the delivery is not intended to be made until more than four months after the contract has been concluded.

(3) The total order sum must be paid as follows, insofar as nothing else is agreed in writing: 10% of the order sum is already due for payment when the purchase order is placed, or when the acknowledgement of order is received: the invoice for this down-payment is due for payment immediately and it must be paid in advance; 50% of the order is due for payment and it must be paid in advance before dispatch, or when the readiness for dispatch is notified, i.e., 3 working days as a rule before the seller makes the delivery and presents the invoice; 40% of the order sum must be paid within 14 working days after the completed delivery and after the corresponding invoice has been received.

As a divergence from that, the payment can only be made after the delivery whenever it is agreed that the buyer submits to the seller an unobjectionable surety that is underwritten by a reputable bank or insurance company, or a letter of credit amounting to the total value of the order. The aforementioned securing instruments will only apply as agreed between the parties if the seller has checked and expressly approved them in writing.

The buyer can be given a prolonged period of payment via a deferred letter of credit, insofar as the payment is agreed on the basis of a letter of credit. While doing so, the buyer pays the financing cost and the handling fee for the letter of credit, as well as the charges of both banks. However, the chosen securing instrument only applies as agreed between the parties if the seller has checked and expressly approved it in writing.

The receipt of payment by the seller is decisive for the date of payment. Payment by check is excluded, insofar as it is not agreed separately in individual cases. If the buyer does not pay on the due date, then the outstanding amounts will attract interest at the rate of 9 percentage points above the basic interest rate from the due date for payment onwards; the assertion of claims for further damages remains unaffected in the case of default.

(4) It is only permissible for the seller to set off such claims against the buyer's counter-claims, or to retain the payments that he has received from the buyer, insofar as the counter-claims are undisputed or they have been established as legally binding by a court of law.

(5) The seller is entitled to make the still outstanding deliveries or performance dependent upon a down-payment or a pledged security whenever he becomes aware – after concluding the contract – of circumstances that are likely to substantially reduce the buyer's creditworthiness and that jeopardize the buyer's payment of the seller's outstanding debt claims arising from the respective contractual relationship (including those debt claims arising from other individual orders to which the same basic contract applies).

Article 4 Delivery and period of delivery

(1) The deliveries will be made ex-works.

(2) The time limits and deadlines that the seller promises for the deliveries and performance only apply as approximate, unless a fixed time limit or a fixed deadline is expressly promised or agreed. The time limits for delivery and the deadlines for delivery refer to the point in time when the goods are handed over to the carrier, freight-forwarder or another third party that is commissioned with the transport, insofar as the dispatch has been agreed.

(3) The seller can - irrespective of his rights arising from the buyer's delayed or defaulted payment - demand that the buyer prolongs the time limits for the delivery and performance, or the

seller can postpone the deadlines for the delivery and performance by the period during which the buyer does not comply with his contractual obligations vis-à-vis the seller.

(4) The seller is not liable for impossible delivery or delayed delivery, insofar as these eventualities are caused by force majeure (act of God) or other events that were unforeseeable at the point in time when the contract was concluded (e.g., operational interruptions of all kinds, difficulties with procuring materials or energy, delayed transport, strikes or lawful lockouts, official measures, or because of outstanding, incorrect or untimely supply by his own suppliers (reservation of self-supply)) that have been caused and for which the seller is not responsible. The seller is entitled to withdraw from the contract, insofar as such events make it substantially more difficult for the seller to make the delivery or to provide the performance and the hindrance is not for a temporary period only. In the case that the hindrance is for a temporary period, the time limits for delivery or performance will be prolonged, or the deadlines for delivery and performance will be postponed by the period of the hindrance plus a reasonable start-up time. Insofar as it is unreasonable for the buyer to accept the delivery as a result of the delay, he can withdraw from the contract by means of making a written declaration to the seller in writing immediately.

(5) The seller is only entitled to make partial deliveries if the partial delivery is usable for the buyer within the framework of the contractually specified purpose and if the delivery of the remaining ordered goods is secured and if the buyer does not incur any considerable extra cost or additional cost as a result (unless the seller declares that he is prepared to pay these costs).

(6) If the seller falls into delay with a delivery or performance, or if it is impossible for him to make a delivery or provide the performance irrespective of whatever reason, then the seller's liability will be limited to paying compensatory damages according to the standard that is mentioned in Article 8 of these General Terms and Conditions of Delivery.

Article 5 Place of fulfilment¹, dispatch, packaging and passage of risk

(1) Bad Homburg vor der Höhe, Germany is the place of fulfilment for all obligations arising from the contractual relationship, insofar as nothing else is determined.

(2) The type of dispatch and packaging are subject to the seller's dutiful discretion.

(3) The risk will pass to the buyer at the latest when the object of delivery is handed over to the carrier, freight-forwarder or another third party that is intended to carry out the dispatch (whereby the beginning of the loading operation is decisive). This rule also applies whenever partial deliveries are made, or if the seller has undertaken yet another performance e.g., dispatch. If the dispatch or the handover is delayed as a result of a circumstance which was caused by the buyer, then the risk will pass to the buyer on the day when the delivery item is ready for dispatch and the seller has notified this fact to the buyer.

(4) If the buyer falls into delay with the acceptance, or if he culpably infringes other cooperative duties, then he has to compensate the seller for the damage that arose in this respect, including any additional expenditure. In particular, the buyer will pay for any storage of the delivery item by the seller that is caused as a result. The seller is entitled to charge the storage cost as a lump sum of 0.25% of the purchase price of the delivery item that is agreed overall, for every expired week of the storage, unless the buyer proves that the seller did not incur any damage at all or that he incurred lesser damage because of storing the delivery item. The seller reserves the right to assert and prove further storage costs or lesser storage costs.

(5) The seller will only insure the consignment against theft, damage caused by breakage, transport, fire and water, or other insurable risks, in response to the buyer's express request and at the latter's risk.

¹ *domicilium disputandi*

Article 6 Warranty and redhibitory defects

(1) The warranty period is one year after the delivery has been made. This time limit does not apply to the buyer's claims for compensatory damages that arise from injuring the life, limb or health, nor to those that arise from deliberate or grossly negligent infringements of duty by the seller or his agents or subcontractors, which will be time-barred in each case according to the legal regulations.

(2) The delivery items must be carefully inspected immediately after they have been delivered to the buyer, or to a third party

whom he has designated: they apply as accepted by the buyer if he does not complain about defects to the seller in writing within seven working days after the delivery, regarding apparent defects or other defects that would have been detectable during an immediate, careful inspection. The delivery items apply as having been accepted by the buyer regarding other defects, if the complaint about defects is not received by the seller within seven working days after the point in time when the defects became apparent. However, if the buyer could have already detected the defects during normal use at an earlier point in time, then this earlier point in time is decisive for beginning the time limit to make complaints. A criticized delivery item must be sent back to the seller free of freight charges, in response to the seller's demand. The seller will refund the cost of the most economical route for the dispatch in the case that the complaint about defects is justified but this rule does not apply insofar as the cost has increased because the delivery item is situated in a place that is not the agreed place of use.

(3) The seller is obligated and entitled at his discretion to repair the defects in the delivery items, or to deliver replacements within a reasonable time limit. The buyer can withdraw from the contract or reduce the purchase price reasonably in the case that the remedy fails, i.e., it is impossible, unreasonable to repair the defects, or the seller refuses to do so, or the repair or the delivered replacements are delayed unreasonably.

(4) If the seller is to blame for a defect, then the buyer can demand compensatory damages, subject to the prerequisites that are mentioned in Article 7.

(5) If there are defects in the components of other manufacturers that the seller cannot remedy because of legal licensing reasons or factual reasons, then the seller will make his warranty claims against the manufacturer and suppliers at his discretion for the buyer's account, or he will assign them to the buyer. Warranty claims against the seller will only exist in the case of such defects - subject to the other prerequisites and according to the standard of these General Terms and Conditions of Delivery - if the legal pursuit of the aforementioned claims against the manufacturer and supplier was unsuccessful, or it does not have any prospect of success on account of an insolvency for example. The statutory limitation of the buyer's relevant warranty claims against the seller will be suspended during the period of litigation.

(6) The warranty period will be invalidated, insofar as the buyer modifies the delivery item without the seller's consent, or if he

arranges for a third party to modify the delivery item and it would be impossible or unreasonably difficult for the seller to remedy the defect as a result. In every case, the buyer has to pay the extra cost of remedying the defect that has arisen because of the modification.

Article 7 Liability and compensatory damages because of blame

(1) The seller is unlimitedly liable for the damages that arise from injuring the life, limb or health, which have been culpably caused by the seller or by one of his legal representatives, agents or subcontractors. The seller is also unlimitedly liable for the damages that are caused by the qualitative deficiencies which the seller guarantees, or in the case of the seller's fraudulent conduct.

(2) The seller is unlimitedly liable for the damages that he or one of his legal representatives, agents or subcontractors has caused because of (criminal) intent or gross negligence.

(3) The seller is limitedly liable - except in the cases that are mentioned in Article 7 (1) or Article 7 (4) - to the contractually typical damages, in the case that essential contractual duties were slightly or negligently infringed, or which the seller or one of his legal representatives, agents or subcontractors has culpably caused. The essential contractual duties are abstractly those duties that have to be fulfilled for enabling a contract to be properly implemented at all and on which the contractual parties must regularly rely will be complied with.

(4) The liability according to the Product Liability Law remains unaffected.

(5) The seller's liability is excluded otherwise.

(6) The statutory period of limitation for making claims to compensatory damages against the seller is one (1) year, except in the cases that are mentioned in Article 7 (1), Article 7 (2) or Article 7 (4).

Article 8 Reservation of ownership

(1) The following agreed reservation of ownership serves for securing all of the seller's respectively existing present and future debt claims against the buyer that arise from the supply relationship which exists between the contracting parties, including the

balance claims on the current account that arise from the current account's relationship which is based upon this supply relationship.

(2) The goods that the seller has delivered to the buyer remain the seller's property until all of his secured debt claims have been paid completely.

(3) The reservation of ownership includes the goods themselves and the goods that are substituted for them according to the following provisions: they will be referred to as the „conditional commodity“ hereinafter.

(4) The buyer will safeguard the conditional commodity for the seller free of charge.

(5) The buyer is entitled to process the conditional commodity during the ordinary course of business until it begins to be utilized (Paragraph 9) and he is also entitled to sell it: mortgaging and pledging it as security is impermissible.

(6) If the buyer processes the conditional commodity, then it is agreed that the processing takes place in the manufacturer's name and for his account, as well as that the seller acquires ownership directly or - if the processing takes place with materials from several owners, or the value of the processed article is more than the value of the conditional commodity - the co-ownership (fractional ownership) of the newly created article is in relation to the value of the conditional commodity according to the value of the newly created article. The buyer assigns herewith his future ownership or - in the aforementioned relationship - his future co-ownership of the newly created article to the seller as security, for the case that no such acquisition of ownership should arise for the seller. If the conditional commodity will be connected or inseparably mixed with other articles in order to form a unified article and if one of the other articles must be viewed as the main article, then the seller proportionately assigns to the buyer [herewith] the co-ownership of the unified article according to the relationship that is mentioned in Line 1, insofar as the main article belongs to him.

(7) In the case of reselling the conditional commodity, the buyer assigns herewith the debt claim against the acquirer that arises from it - proportionately according to the share of co-ownership in the case that the seller holds co-ownership of the conditional commodity - to the seller for the sake of security. The same thing applies to other debt claims that arise from replacing the conditional commodity, or which arise otherwise regarding the conditional commodity, like for example insurance claims or claims arising

from unauthorized or illegal action in the case of loss or destruction. The seller irrevocably empowers the buyer to collect the debt claims that are assigned to the seller in his own name. The seller is only allowed to revoke this empowered collection in the case of utilization.

(8) If a third party encroaches on the conditional commodity - especially through seizure - then the buyer will immediately advise the third party about the seller's ownership and inform the seller about this matter in order to enable him to assert his rights of ownership. The buyer is liable to the seller, insofar as the third party is unable to compensate the seller for the judicial or extra-judicial costs that he incurs in this connection.

(9) The seller will release the conditional commodity, as well as the articles or debt claims that replace it, insofar as their value exceeds the amount of the secured debt claims by more than 50 %. The seller has the discretion to choose the articles that must be released accordingly.

(10) If the seller withdraws from the contract in the case that the buyer's conduct breaches the terms of the contract - especially if the buyer is in arrears with payment or he defaults on payment - then the seller is entitled to demand that the conditional commodity be ceded to him.

Article 9 Final provisions

(1) If the buyer is a businessman, a legal entity according to public law or a special asset according to public law, or if he does not have any general place of jurisdiction in the Federal Republic of Germany, then the seller's registered office is the place of jurisdiction for settling all possible disputes that arise from the business relationship between the seller and the buyer, insofar as the prerequisites that are mentioned in Article 38 of the Code of Civil Procedure are present and nothing else has been agreed. This regulation does not affect any compulsory legal provisions about sole places of jurisdiction.

(2) The relations between the seller and the buyer are solely subject to the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods, (abbreviated to CISG), dated 11th April 1980, as well as the Rome Ordinances, do not apply.

(3) Insofar as the contract or these General Terms and Conditions of Delivery contain regulatory loopholes, the legally effective regulations which the contracting parties would have agreed according to the contract's economic objectives and the purpose of these General Terms and Conditions of Delivery - if they were aware of the regulatory loopholes - apply to closing these loopholes.

Hinweis:

Der Auftraggeber nimmt davon Kenntnis, dass der Verkäufer Daten aus dem Vertragsverhältnis nach § 28 Bundesdatenschutzgesetz zum Zwecke der Datenverarbeitung speichert und sich das Recht vorbehält, die Daten, soweit für die Vertragserfüllung erforderlich, Dritten (z.B. Versicherungen) zu übermitteln.

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