

Dr. Wiesner Steuerungstechnik GmbH

General Terms and Conditions of Business (as at March 2004)

§ 1 General – Scope of validity

- (1) These Terms and Conditions of Business are deemed to apply to all present and future business relations with enterprises. Entrepreneurs defined in these Terms and Conditions of Business are deemed to be natural or legal persons or partnerships having legal capacity with whom or which business relations are entered into, who or which are engaged in exercising a trade or business or pursuing independent professional activities.
- (2) General trading terms or conditions deviating from, opposing or supplementing these Terms and Conditions of Business, even if known, are not deemed to constitute part of any contract concluded with us unless validity of the same has been expressly approved by us in writing.

§ 2 Conclusion of contract

- (1) Our quotations are non-binding. We reserve the right to make technical changes or modifications to shape, colour and/or weight as long as these remain within the scope of what is reasonable. We are entitled to conclude subcontracts.
- (2) Customers' purchase orders are binding. We are entitled to accept offers of contract incorporated in purchase orders within two weeks of our having received the same. Such acceptance may be expressed in writing or by effecting delivery to customers concerned.
- (3) We reserve all proprietary rights and copyright attaching to information passed on to customers or suppliers, in particular illustrations, drawings, calculations and other records or data compiled by electronic means; such material may not be disclosed to third parties. This ruling is deemed to apply in particular to such written records and information specified as "private and confidential", prior to passing on any such data, the customer/supplier must have first obtained our express approval in writing.

§ 3 Period of delivery, delays in delivery

- (1) The period of delivery results from the agreements entered into by the contracting parties. Observance of the same on our part is subject to prior clarification of all commercial and technical issues between the contracting parties as well as to the customer's compliance with all relevant obligations, e.g. procurement of necessary official certificates, licenses or approvals, or making of any stipulated down payment. Failure to render such performance will result in the period of delivery being extended accordingly. This is not deemed to apply if we are responsible for such delay in delivery.
- (2) Observance of any delivery deadline is subject to deliveries having been made to ourselves correctly and in due time. Notification of any imminent delays will be given as soon as possible.
- (3) Delivery deadlines are deemed to have been observed as soon as the subject of the contract has left our factory or readiness for dispatch thereof has been advised up to the time the delivery date has expired. In the event of any official acceptance testing having to take place, the ruling criterion – except in cases where rejection is justified – is deemed to be the date of the said acceptance testing or, alternatively, upon announcement of readiness for such acceptance testing.
- (4) In the event of dispatch or official acceptance testing of the subject of the contract being delayed due to reasons for which the customer is answerable, costs incurred due to such delay will be charged to the customer's account commencing one month following announcement of readiness for dispatch or official acceptance testing as the case may be.
- (5) In the event of non-observance of the delivery deadline being attributed to force majeure, industrial disputes or other circumstances beyond the influence or control of the supplier, the period of delivery will be extended accordingly. We will notify the customer of the beginning and end of such circumstances as soon as possible.
- (6) If and when it ultimately becomes impossible for us to render total performance prior to the passing of risk, the customer may rescind the contract without setting any time-limit. Moreover, the customer may rescind the contract if execution of any part of the delivery belonging to a purchase order becomes impossible and that customer has a rightful or legitimate interest in rejecting partial delivery thereof. If and where this is not the case, the customer is under obligation to pay the contract price apportionable to the partial delivery concerned. The same is deemed to apply to inability of the supplier to render performance. In the event of such impossibility or incapability occurring during any delay in official acceptance testing or in the event of the customer being solely or predominantly answerable for such circumstances, he will remain under obligation to render counter-performance accordingly.
- (7) In the event of any delay occurring on our part and the customer incurring any damage as a consequence thereof, he shall be entitled to claim lump-sum compensation for such delay. This amounts to 0.5 % in respect of each full week of delay but not exceeding 5% of the value of that part of the total consignment rendered unusable on time or in conformity with the contract owing to such delay. In the event of the customer stipulating a reasonable time-limit for us to render performance after the date of dischargeability – making due allowance for cases of statutory exemption – and that time-limit not being observed, the customer shall be entitled to rescission within the scope of the statutory provisions.
- (8) On demand made by us, the customer is under obligation to specify, within a reasonable time-limit, whether he is withdrawing from the contract due to delay in delivery or insisting on delivery.

§ 4 Passing of risk, official acceptance testing, advance acceptance testing

- (1) Risk is deemed to pass to the customer as soon as the subject of the contract has left our factory, this also applying where partial deliveries are made or where we have assumed other forms of performance, e.g. forwarding charges of delivery and installation.
- (2) Where official acceptance testing or advance acceptance testing is required to take place, this is deemed to constitute the ruling criterion in each case for the passing of risk. This must be carried out immediately on the date stipulated for advance or official acceptance testing or, alternatively, upon notification announcing readiness for such acceptance testing. The customer is not permitted to reject advance or official acceptance testing due to any non-essential defect prevailing.
- (3) Where contractually stipulated, the relevant product will be subjected to advance acceptance testing on our premises. The specifications drawn up during such testing are deemed to represent the final status of the facility. Final commissioning on the customer's premises relates solely to proper functioning geared to continuous operation. For trial and advance-testing purposes the customer undertakes to furnish us with a sufficient supply of sample parts and marginal samples free of charge.
- (4) In the event of dispatch being delayed or advance/official acceptance testing not taking place due to circumstances not attributable to us, risk is deemed to pass to the customer from the date of notification announcing readiness for dispatch or advance/official acceptance testing. We undertake to take out any insurance policies demanded by the customer and at customer's expense.
- (5) Partial deliveries are permissible as far as these can be reasonably expected of the customer.

§ 5 Payment

- (1) Prices stipulated in our quotations are binding. Price quotations submitted to entrepreneurs are to be interpreted as plus value added tax and apply ex works including loading at our factory, but exclude packaging and unloading. In the event taxes, customs duties, freight charges, fees or expenses undergoing increase or being newly introduced between the date of conclusion of the contract and performance thereof, we shall be entitled to raise prices accordingly provided that four months have elapsed since concluding the contract or the contracting party is classified as a merchant. Prices are deemed to be valid for four months commencing from the date of conclusion of the contract. Where a period of delivery is stipulated exceeding four months or in the event of continuous or recurring obligations lasting for longer than 4 months, we shall be entitled to pass on to the customer any cost increases that have meanwhile occurred in respect of procurement/delivery including such increases caused by law amendments (e.g. increases in value added tax) by raising prices to a corresponding level.
- (2) If, on the basis of a separate agreement, we are to assume assembly of the machines, facilities, etc. supplied by us and place the same in service, we will provide the necessary fitters. The costs arising in that respect, especially for travel, working and waiting times as well as personnel separation allowances will be to the debit of the customer. Work performed on Sundays, public holidays, night-work and overtime will be billed by us applying corresponding additional charges. Required scaffolding and lifting apparatus as well as auxiliary personnel must be provided by the customer free of charge.
- (3) In the absence of any special arrangements, payment is to be made to us on account without deductions of any kind whatsoever, as follows:
 - 30% down payment on receipt of the confirmation of order;
 - 50% (a) within 2 weeks after the customer has been notified that the main units are ready for dispatch or (b) where advance acceptance testing is to be carried out, then after such testing has taken place;
 - 20% within 2 weeks after delivery to the customer.
- (4) The customer is only entitled to effect any offsetting if his counter-claims have been established by declaratory judgement or have been recognized by us. The customer may only exercise any rights of retention if his counter-claim is based on the same contractual relationship.

§ 6 Retention of title

- (1) We reserve rights of ownership on the subject of the contract until all claims resulting from current business relations have been settled in full.
- (2) The customer undertakes to treat the subject of the contract with due care. In the event of maintenance or inspection work being necessary, the customer undertakes to perform such work regularly and at his own expense.
- (3) The customer is under obligation to notify us without delay of any seizure affecting the subject of the contract, e.g. by way of attachment, as well as any damage to, or destruction of the same. The customer undertakes to report to us without delay any change in ownership as well as changes to his personal domicile.
- (4) Where the customer acts in breach of contract, in particular by defaulting in payment or by violating any obligation in pursuance of paragraphs 2 and 3 of this provision, we shall be entitled to withdraw from the contractual agreement and demand return of the subject of the contract.
- (5) The customer shall be entitled to resell the subject of the contract in the ordinary course of business. He undertakes to assign to us, here and now, all claims against any third party arising from resale to the amount the invoice. We herewith agree to assume such assignment. Following assignment the customer is authorized to effect collection of the claim concerned. If and as soon as the customer fails to meet his obligations of payment in due form and defaults in payment, we reserve the right to collect the claim concerned ourselves.
- (6) Any processing of the subject of the contract by the customer is always deemed to be in our name and on our behalf. In the event of such processing taking place with other objects not belonging to us, we automatically acquire co-ownership of the new product in ratio of the value of the subject of the contract to the said other object or objects thus processed. The same applies if the subject of the contract is intermingled with other objects not belonging to us.

- (7) If so demanded by the customer, we undertake to release security we are entitled to, as far as the value thereof exceeds 10% of the claims due to be secured, in the event of these not yet having been settled.

§ 7 Warranty, warranty claims

I. Defects of quality

- (1) We assume warranty in respect of defects resulting from the subject of the contract in accordance with our own options, first by rectifying such defects or by providing a replacement (subsequent performance). In order to rectify all defects appearing necessary to us or to provide replacements, the customer undertakes to grant us the time and opportunity needed for this purpose after his having reported the said defects; otherwise this will exempt us from all liability in respect of ensuing consequences. Only in urgent cases involving imperilment of operating safety or the warding-off of disproportionately high damage – in which case we must be notified immediately thereof – shall the customer be entitled to remove the defect himself or have it removed by third parties and to claim compensation from us for the necessary expenses thus incurred.
- (2) In the event of subsequent performance failing, or if we have been granted a reasonable period of time to effect such subsequent performance and this has elapsed to no avail or if this cannot reasonably be expected of the customer, the customer, acting on principle according to his option, may demand reduction of payment (reduction of purchase price) or rescission of the contract (withdrawal). However, insignificant violation of the contract, in particular minor defects, shall not entitle the customer to any such rights of rescission.
- (3) If the customer opts for rescission of the contract on grounds of any defect in title or of quality in the event of subsequent performance having failed, he shall not be entitled to any additional compensation due to such defect. If the customer opts for compensation in the event of subsequent performance having failed, the product or products will remain with the customer if this can be reasonably expected of him. Compensation is limited to the difference between the purchase price and the value of the defective product or products. This does not apply if we have caused violation of the contract with intent to deceive.
- (4) In particular, no warranty is assumed in the following cases: inappropriate or improper use, faulty assembly or placing in service by the customer or third parties, natural wear and tear, faulty or negligent handling, improper maintenance, unsuitable operating equipment or means of operation, faulty construction work, unsuitable foundation sites, chemical, electro-chemical or electrical influences for which we are not responsible.
- (5) Except in the case of malice aforethought, the statutory period of limitation in respect of warranty for personal injury, injury to health and loss of life or in cases stipulated in Sections § 438, Paragraph 1, Subparagraph 2 and Section § 634 a, Paragraph 1, Subparagraph 2 BGB (German Civil Code) (Warranty for Defects to Structures, Inbuilt Construction Materials, Structure-related Planning and Surveillance Services) is one year.
- (6) Customers do not receive any guarantees from us within the intendment of the law. Manufacturers' guarantees remain unaffected thereby.
- (7) If the customer accepts any defective product despite being aware of the fault concerned, he will only be entitled to claims and rights for defects in pursuance of Section 437 BGB if expressing reserved rights in respect of such defect when taking delivery.
- (8) In the event of the customer unjustifiably holding us liable for warranty without a warranty claim, he undertakes to reimburse us with all costs arising in connection with examining the subject of the contract.
- (9) In the event of the customer or any third party undertaking any improper repairs, no liability is incurred by us for the resulting consequences. The same applies to changes or modifications made to the subject of the contract without our prior consent or approval.
- (10) Claims exerted by the customer for expenses necessary for the purpose of subsequent performance, in particular transportation, infrastructure costs or costs of labour and materials are ruled out if such expenses are subject to increase due to the object of delivery having been subsequently removed to a different location than that of the ordering party's place of business, unless such removal corresponds to contractual use.
- (11) Rights of recourse remain unaffected by the above paragraphs (Sections §§ 478, 479 BGB) unless requirements to give notice of defects have been violated in pursuance of Section 377 HGB (German Commercial Code).

II. Defects in title

- (12) Should use of the subject of the contract lead to infringement of industrial proprietary rights or copyright in Germany, we will fundamentally seek to procure rights of further use for the customer concerned at our own expense or modify the subject of the contract in such a way reasonable to the customer that infringement of such proprietary rights no longer exists. If this proves impossible on economically acceptable conditions or within a reasonable period, the customer shall be entitled to rescission of the contract. Under the said conditions we ourselves shall also be entitled to withdraw from the contract. Moreover, we agree to exempt the customer from any claims asserted by the holder of the said proprietary rights, either uncontested or established by declaratory judgement.
- (13) In the event of such infringement of industrial proprietary rights or copyright prevailing, these obligations are final with reservation as to Clause § 8. They are only deemed to exist if
 - the customer notifies us without delay of asserted infringement of industrial proprietary rights or copyright;
 - the customer renders adequate support to us in warding off such asserted claims or renders it possible for us to implement the modifications in accordance with Paragraph 7;
 - all means of defence remain reserved on our part including extra-judicial settlement;
 - the relevant defect in title is not based on any instruction of the customer and such infringement of rights has not been caused by the customer having made arbitrary changes or modifications to the subject of the contract or having used the same in any way not conforming to the contract.

§ 8 Liability, limitation of liability

- (1) In cases involving breach of duty through ordinary negligence, our liability is limited to direct and foreseeable average damage typical of a contractual agreement as based on the nature of the merchandise concerned. This also applies to breach of duty through ordinary negligence on the part of our statutory representatives or vicarious agents. We are not liable to entrepreneurs for minor insignificant breaches of duty through ordinary negligence.
- (2) The above limitation of liability does not pertain to claims made by a customer resulting from product liability or where we are culpable of serious blame (malice aforethought, malevolence or gross negligence). Furthermore, the said limitation of liability is not deemed to apply to personal injury, injury to health or loss of life of the customer imputable to ourselves.

§ 9 Statute of limitations

All claims asserted by the customer – no matter on what legal grounds – become statute-barred in one year. The statutory periods apply to damage claims in accordance with Clause § 8, Paragraph 2. These also apply to defects in a structure or to objects of delivery that have been employed for a structure corresponding to their customary manner of use and that have caused its defectiveness (refer to Clause § 7, Item 5).

§ 10 Use of software

Where software is included in the scope of delivery, the customer is granted non-exclusive rights to use the supplied software including its documentations. It is entrusted to him for use on the subject of the contract for which it is intended. Use of the software on more than one system is prohibited. Use of the software by the customer is restricted to the extent permitted by law (Sections §§ 69 a ff. UrhG [Copyright Act]) i.e. reproduction, editing, translation or conversion of the object code to the source code. The customer undertakes not to remove manufacturers' specifications – in particular copyright notices – or to alter the same without our prior express approval. All other rights attaching to the software and documentations, including copies thereof, are retained by us or the software suppliers respectively. Granting of sub-licences is prohibited.

§ 11 Particularities applying to purchases effected by us

- (1) In the event of any delay in delivery or ultimate non-delivery on the part of a supplier, that supplier undertakes to pay to us lump-sum compensation amounting to 20% of the purchase price of that merchandise, the delivery of which has defaulted on, or the delivery of which has ultimately failed to take place. The payment of compensation is correspondingly higher or lower if we prove higher damages or the supplier lower damages.
- (2) If, after we have fallen behind schedule, the supplier grants us a period of grace of reasonable length accompanied by a warning of rejection, he shall be entitled to withdraw from the contract after such period of grace has elapsed to no avail; the supplier shall only be entitled to compensation on grounds of non-performance amounting to foreseeable damages if the said delay is based on malice aforethought or gross negligence; in other respects liability for compensation is limited to 50% of the damage occurred. Such limitation on liability does not apply, however, if a commercial firm-deal has been agreed upon.
- (3) We undertake to examine the merchandise within a reasonable period; notification of defects is deemed to be within the prescribed time-limit if received by the supplier within a period of 2 weeks.
- (4) Unless stipulated otherwise in writing, we pay the purchase price within 30 days computed from delivery and receipt of the invoice subject to 3% cash discount, or net within 60 days after receipt of the invoice.
- (5) In the event of the supplier being responsible for any product damage, he undertakes, on initial demand, to indemnify us from third-party compensatory damages where the cause lies in his own area of control and organization and he himself is liable in external relationship vis-à-vis third parties. Within this scope the supplier also undertakes to reimburse us for any expenses resulting from or in connection with any recalling campaign implemented by us. We will – as far as this is possible and can be reasonably expected – notify the supplier concerning the content and extent of recalling operations due to be implemented and give him the opportunity of commenting on the same.
- (6) The supplier is responsible for ensuring that no third-party rights, in particular industrial proprietary rights or copyright, are violated within the Federal Republic of Germany in connection with his delivery operations. In the event of our being claimed on by any third party in that respect, the supplier undertakes to indemnify us from such claims on initial demand; without the supplier's consent we are not entitled to make any arrangements with such third parties or, in particular, to effect any compromises. This obligation on the part of the supplier to effect indemnification pertains to all expenses necessarily incurred by us resulting from or in connection with any third party claims.
- (7) Periods of warranty and statutory limitation, warranty rights and liability are determined in accordance with the statutory regulations. No abridgement of warranty or a restriction on liability or exclusion of liability takes place.

§ 12 Concluding provisions

- (1) The law of the Federal Republic of Germany applies. The provisions of the UN Sales Convention are not applicable.
- (2) If the customer is a merchant, legal person under public law or a separate estate under public law, our registered office is deemed to be the place of performance and legal venue unless stated otherwise in our confirmation of order; however we are also entitled to file action against our contractual partner at his legal venue.
- (3) In the event of any provisions of the contract concluded with the customer, including these General Terms and Conditions of Business, being or becoming invalid, in whole or in part, the validity of the remaining provisions will not be affected thereby. Any ruling that may be or become invalid in whole or in part shall be replaced by another ruling, the commercial success of which approaches the invalid provision as closely as possible.