

# **General Terms of Delivery and Payment**

## **Wiebrock Mess- und Regeltechnik GmbH, D-Herford**

### **for use in business relations with other companies**

#### **1. General Terms**

For all business relations – and for all joining transactions, too – exclusively the sales conditions of the supplier shall apply. All other terms, especially the purchase conditions of the purchaser, are not binding for the supplier, also in case he does not raise express objection against them.

Any verbal agreements deviating from these terms of delivery, especially parol promises of representatives, have to be confirmed in writing.

#### **2. Quotations**

Our quotations are without engagement.

#### **3. Prices**

are always valid for the supply ex works, excluding packing and transport.

For the execution of the order the actual prices ruling on the day of delivery are valid, unless fixed prices have been explicitly agreed upon for a certain period of time or for a certain object.

In case between the day of order and the day of delivery there should occur a general raising of price of the species of the ordered goods, also a fixed price, as stipulated, will increase correspondingly. Unforeseen difficulties in manufacture and/or additional operations which should prove necessary in case of a special production order, will cause appropriate raising of prices.

#### **4. Payment**

All payments shall be made free of charge to Supplier's payment office.

Our invoices are payable within a fortnight after date of invoice, less 2 % discount from the net amount of goods, or within 30 days net, without any deduction. If the time of payment should be exceeded, we are entitled to charge interest for detention amounting to at least 4 % above the ruling bank rate of the Deutsche Bundesbank.

These shall have to be higher or lower, respectively, if the supplier proves a debit at a higher rate of interest, or if the orderer proves a lower debit.

Bills and cheques are only accepted for payment purposes. In case we shall accept a bill, the purchaser will have to pay discount and bank fees. If the purchaser should not pay a paper debt in due time, or a cheque should be dishonoured, or the purchaser should delay payment of a due debt longer than one week, all demands resulting from our mutual business relations shall fall due at once.

Compensation (offset) and charging lien on our demands are inadmissible. On the contrary, we reserve the right to compensate all our own claims, including claims arising from bills, against all demands the purchaser is entitled to claim on us, also in case of different due dates of the mutual claims.

#### **5. Dispatch**

If the purchaser has not given detailed instructions for delivery, we shall dispatch the goods to the best of our judgement. We do not take over any obligation with respect to forwarding at the lowest possible price. In any case, all shipments will be forwarded for account and risk of the purchaser. The risk passes to the Customer even when goods are delivered carriage-paid. Supplier can also take out insurance for consignments to cover the usual transport risks at Customer's request and expense.

Packing will be invoiced at cost price, and on freight-free return of empties we shall credit you with 2/3 of the amount invoiced, if the returned packing should be still utilizable. The amount credited can be deducted from the next remittance.

#### **6. Term of Delivery**

Indication of delivery period is made by us to the best of our judgement, but without engagement, on the assumption of ordinary course of business and subject to the possibility of provision with necessary raw materials. The delivery period indicated by us is running from date of acknowledgement of order resp. clearing of all details and refers to the date of delivery ex works.

If any materials are supplied by the customer, the term of delivery shall begin upon receipt of these materials in our factory. Any terms of delivery stated in any quotations shall merely be valid for immediate orders. Otherwise our terms of delivery shall have to be newly agreed.

#### **7. Delays and Interruptions in Delivery**

Delivery obligations and delivery periods will be interrupted as long as the purchaser is behind with his payments. Compensation claims of the seller (e.g. ceasing gain) are not touched thereby. In case there should raise doubts regarding the purchaser's ability to pay, we reserve the right to condition further fulfilment of contract upon certain securities.

In the case of a delay in delivery, the purchaser has to grant an appropriate extension of the delivery period of at least four weeks. In case of orders according to catalogue, after ineffective expiration of this time extension the purchaser has the right to withdraw from the contract. If it deals with orders for special manufacture, a new term of delivery has to be agreed upon.

The amount of any damage claims of orderer's because of any delay or impossibility – except in cases of gross negligence – shall be limited to the price of the delayed or non delivered part of the delivery. In any case of gross negligence, our liability shall be limited to an indemnification of the immediate damage caused.

Rights of indemnity on account of deferred delivery are excluded. Acts of God, breakdown in manufacture, lack of workers, energy, or raw materials, difficulties in provision of production materials and spare parts for machinery, strike, lockout, breakdown of traffic, and acts of state dispend ourselves from our delivery commitment for the duration of the interruption. Additionally, in these events we are entitled to withdraw from the contract in its entirety or from parts of same.

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#### **8. Defects**

Material defects become statute-barred after 12 months.

Any complaints with respect to quality or quantity of the goods supplied have to be raised in writing within 8 days from the receipt of goods, indicating the dates of order, numbers of invoice and dispatch note, and enclosing samples of defect goods. Latent defects have to be notified in writing immediately on discovery. The burden of proof for the fact that it deals with a latent defect rests with the purchaser. Justified customer's complaints raised in due time will be granted by us according to our choice by means of either exchange of deficient goods or compensation of the undervalue, provided that the relevant articles are still in the same condition as on delivery. Rejects may be returned only with our express consent. Return will be on the purchaser's risk. In case of shortage, it is at our option whether we shall supply goods in replacement or credit the relevant amount. Customer may not refuse to accept consignments on account of insignificant defects.

On account of a deficient partial delivery, the purchaser cannot derive any title regarding the remaining partial deliveries. Claims out of customers' complaints will become barred by the statute of limitations one month the latest after written rejection of the complaint by the supplier.

In addition, we shall be liable for all and any damage only if these are based on any grossly negligent or intentional violation of our contractual or legal obligations. In case of any gross negligence, our liability shall be limited to a reimbursement of the immediate damage caused. This limitation of our liability shall not apply in cases of any gross negligence on the part of any managing officers, and in case of a grossly negligent violation of any principal obligations. The orderer shall assume a guarantee assuring that the production and supply of any objects manufactured in accordance with his specifications are not violating any protective rights of any third party. He shall keep us harmless of any claims which may be raised in this connection.

If notice of defects has been given, Customer may withhold payments to an extent commensurate with the defects found. Customer may only withhold payments if the notice of defects concerns defects which are indisputably justified. If notice of defects has been given without justification, Supplier shall be entitled to demand compensation from Customer for the expenses incurred.

#### **9. Retention of Title**

Until all claims to which we have a title (inclusive of any current account balance claims) are fulfilled as against the orderer for any legal grounds - present and future - the following securities shall be granted to us, to be released as we shall elect, in as far the claim is persistently exceeded by more than 20 per cent.

All goods supplied remain our property until the purchaser's entire payment of total debt resulting from our mutual business relations. If, in connection with payment of purchase price, the guarantee of a bill is undertaken by the seller, the retention of title will not expire before payment of the bill by the purchaser as drawee. The purchaser is obliged to keep and store our goods separately and to insure same against damage and larceny in any case.

The retention of title also applies - corresponding to the value - on the new products resulting from processing. Manufacture is made in our name. The purchaser acts as voluntary consignatory for the seller.

The purchaser is entitled to dispose of the goods under retention of title in ordinary course of business, as long as he is willing and in a position duly to meet his obligations to us. Pledge or mortgage of our goods are not allowed. The purchaser is obliged to prevent from our property any encroachments of a third party (distress etc.) and to give us resp. notice immediately. All claims out of the sale of the goods under retention of title are assigned by the purchaser to us already now, together with secondary and security rights - including bills and cheques - in order to safeguard our claims. If, after processing together with other objects, the goods under our retention of title are sold, the assignment is limited on that part of the demand which corresponds to the part of goods under retention of title from the total value of processed goods at the time of processing.

The purchaser is obliged to keep payments received from these assignments separately and to use them only for the settlement of our demand. In particular cases, we are entitled to inform the buyer on the assignment. On our request, the purchaser has to submit to us a list of the assigned outstandings for the purpose of self-collection by us.

If Customer defaults on payments, Supplier shall be entitled to rescind the contract and take back the goods upon expiry of a reasonable period of grace granted to Customer. Customer shall be obliged to surrender the goods.

#### **10. Place of Contract and Jurisdiction**

For all rights and obligations resulting from the contract, Herford is place of contract and jurisdiction for both parties.

However, Supplier shall also be entitled to sue Customer at the latter's domicile.

#### **11. Export Contracts**

All legal relations associated with the present contractual Agreement shall be governed by German substantive law excluding the United Nations Convention on the International Sale of Goods (CISG).

#### **12. Special Agreements**

or eventual legal invalidity of individual clauses of these delivery terms do not affect validity of the remaining clauses.

The right of the purchaser out of this contract are not transferable.

#### **WIEBROCK**

**Mess- und Regeltechnik GmbH, Maschstr. 22, D-32052 Herford**

Status of June 1st, 2002