

General Terms and Conditions of Delivery and Payment of Wurm GmbH & Co. KG

I. Definition, scope

1. The following terms and conditions shall apply only vis-à-vis entrepreneurs within the meaning of § 13 BGB (German Civil Law Code).
2. The following terms and conditions shall apply exclusively; Wurm GmbH&Co.KG (hereinafter referred to as Vendor) shall not acknowledge any contradictory terms or any conditions of the Purchaser deviating from the terms stipulated herein, unless these have been explicitly acknowledged in writing by Wurm GmbH&Co.KG. The following terms and conditions shall also be applicable if the Vendor delivers the goods ordered to the Purchaser without reservation in knowledge of any of the Purchaser's contradicting terms or of any conditions deviating from its own terms.
3. Stipulations or supplementary agreements deviating from these terms and conditions shall only be effective if these have been confirmed in writing by the Vendor.
4. These terms and conditions shall also apply to future agreements if a continuous business relationship is given.

II. Quotes, quote documents, order confirmation

1. If the order is qualified as a quote in compliance with § 145 BGB (German Civil Law Code), the Vendor shall be entitled to accept this within 4 weeks.
2. The Vendor shall reserve the proprietary rights and copyrights to figures, drawings, calculations and in any other documents. This term shall also apply to written documents which are classified as "confidential". A submission of such documents to any third party shall not be permitted without explicit approval in writing by the Vendor.
3. A delivery agreement shall not be concluded until the order has been confirmed in writing, this shall, however, be the case at the latest at the point of delivery. If the Vendor by submission of a transmission report is able to document proof of the fact that he has sent a declaration by facsimile or remote data transmission, it shall be assumed that the declaration has been received by the Purchaser.

III. Prices, terms of payment

1. All prices of the Vendor shall be understood to be ex manufacturer's works plus the statutory Value Added Tax (VAT) applicable at the point of time of invoicing, excluding packaging, freight and transport insurance. These items shall be billed separately.
2. Price changes shall be permissible if more than four months lie between the point of concluding the agreement and the agreed delivery schedule. If the cost prices according to the market situation, the wages or material costs rise after this point of time up to the completion of the delivery, the Vendor shall be entitled to increase the price appropriately in accordance with the increases in costs. The Purchaser shall only be entitled to rescind from the agreement if the price increase more than insubstantially exceeds the rise in general cost of living between the point of placing the order and delivery. If the Purchaser is a merchant, a legal entity under public law or a separate public-law fund, price increases shall be permissible in accordance with the above-mentioned conditions, if more than six weeks lie between the point of concluding the agreement and the agreed delivery schedule.
3. In so far as no other term has been agreed the costs shall be due and payable at delivery, at the latest at the point of receipt of the invoice. Subject to revocation of the period granted for payment invoices shall be payable within 14 days with a 2% discount deducted from the value of goods, or within 30 days net. The same discount shall also be applicable for deliveries against prepayment or cash on delivery. The prerequisite for granting a discount shall be that all previously due invoices have been paid and settled.
4. As date of receipt of payment for all means of payment means the day on which the Vendor or any third party being entitled to payments from the Vendor is able to finally dispose of the amount in concern shall be understood. Payment by note shall not be classified as payment by cash. The acceptance, even of so-called refinancing notes, shall require a special agreement. Cheques and rediscountable notes shall only be accepted in lieu of performance, all costs associated herewith shall be charged to the Purchaser.
5. In the event of delay of payment by the Purchaser, the Vendor shall be authorised to withhold any or all deliveries or services.

IV. Retention of title

1. The Vendor shall reserve title to the delivery items up to the point of receipt of all payments resulting from the business relationship with the Purchaser.
2. The enforcement of retention of title as well as hypothecation of the delivery items by the Vendor shall not be classified as withdrawal from the agreement, unless this is explicitly declared in writing by the Vendor.
3. The Purchaser shall be entitled to resell the delivery items in the regular course of business; he shall, however, with effect of this date assign any and all claims in the amount of the purchase price agreed between the Vendor and the Purchaser (including statutory Value Added Tax) arising to the Purchaser from the resale, irrespective of whether the delivery items are resold with or without being further processed. The Purchaser shall be authorised to collect these accounts receivable after their assignment. The Vendor's right to collect these accounts receivable himself shall not be affected hereby; the Vendor however, commits himself not to collect these accounts receivable, as long as the Purchaser duly complies with his payment obligations and payment is not delayed. If this is the case, however, the Vendor shall be authorised to demand the Purchaser to disclose the assigned accounts receivable as well as the names of the debtors owing the amounts in concern, to render all information required for collection, to submit the relevant documents and to inform all debtors (third parties) of the assignment.
4. Processing or reworking the goods by the Purchaser shall always be performed on behalf of the Vendor. If the delivery items are processed with other objects which do not belong to the Vendor, the Vendor shall acquire co-ownership in the new object at the point of processing in the ratio of the value of the delivery items to the other objects processed therein.
5. If the delivery items become inextricably admixed with other objects which do not belong to the Vendor, the Vendor shall acquire co-ownership in the new object in the ratio of the value of the delivery items to the other objects admixed therein. The Purchaser shall keep the co-ownership on behalf of the Vendor.
6. The Purchaser shall be neither entitled to hypothecate nor to assign these as security. In the event of a hypothecation or confiscation or any such disposition by third parties, the Purchaser shall immediately inform the Vendor hereof and agrees to make any and all information or documents available to him which may be required to protect its rights. Executory officers resp. third parties shall be informed of the Vendor's title in the goods.
7. The Vendor shall be obliged to release the securities to which he is entitled by the Purchaser's special request in so far as the realisable value of the securities exceeds the securities to be hedged by more than 20%. The Vendor shall be responsible for selecting the securities to be released.

V. Scope, delivery, delivery period, delivery quantities, delay in delivery

1. The declaration of acceptance shall be decisive for the scope of the delivery. Unless no other condition has been explicitly agreed, the Purchaser shall be responsible for obtaining any and all possibly required official approvals for the contractually stipulated use as well as for the due and proper installation of software and for the implementation and training of the operating staff.
2. Compliance with agreed delivery and performance times assumes that all technical issues have been settled and that payments and any other obligations on the part of the Purchaser are given in due time resp. have already been fulfilled. If this is not implemented, the deadline shall be extended appropriately. Deadlines shall be delayed by any reconstruction measures and article modifications desired by the Purchaser. The periods granted for delivery shall not begin to run again until the amendments have been approved by the Purchaser.
3. The Vendor shall supply the Purchaser with contract goods in compliance with his delivery possibilities.
4. Partial deliveries shall be permissible, in so far as no disadvantages with regard to the use thereof arise.
5. The delivery schedule shall be extended by the period of hindrance in the event of force majeure, strike, incapacity without fault, or of any unfavourable weather condition.

VI. Shipment, transfer of risk

If no other term is laid down in the order confirmation, the delivery "ex works" shall be deemed to be agreed. The goods shall be shipped at the Purchaser's risk and expense. This regulation shall also apply to return consignments.

VII. Trademark rights

1. The Purchaser commits himself to immediately inform the Vendor of any trademark right allegations of third parties with regard to the products delivered and to leave it up to the Vendor to defend his rights. The Vendor shall be authorised to carry out any modifications at his own expense which may become necessary as a result of alleged trademark rights brought forward by third parties; this term also applies to goods that have already been delivered and paid for.
2. If a third party under reference to a trademark right belonging to him interdicts the Vendor to manufacture or deliver goods, the Vendor shall be entitled to discontinue production or delivery of the

goods in concern until the legal situation has been clarified by the Purchaser and the third party, provided that violation of trademark right happened without the Vendor's fault. If it is not deemed to be reasonable for the Vendor to continue the order as a result of the delay, he shall be authorised to rescind from the agreement.

3. The Purchaser shall warrant vis-à-vis the Vendor that all goods and services supplied whatsoever are free of third-party rights. He shall in so far release the Vendor from any and all corresponding third-party claims.

VIII. Liability for delay in delivery

1. The Vendor shall be liable according to the statutory provisions as far as the relevant purchase contract stipulates a business to be settled on a fixed date as provided by § 286 Paragraph 2 # 4 BGB (German Civil Law Code) or § 376 HGB (German Code of Commerce). The Vendor shall furthermore be liable according to the statutory provisions if the Purchaser may lawfully argue that he is no longer interested in further performance of the contract due to a delay of delivery caused by the Vendor.
2. The Vendor shall be liable for delay of delivery according to the statutory provisions in the event of damages caused by delay of delivery being due to gross negligence or wilful misconduct by the Vendor, his representatives or auxiliary persons. In case the Vendor is not charged with wilful misconduct his liability shall be restricted to the foreseeable, typically occurring damage.
3. The Vendor shall be liable for delay of delivery according to the statutory provisions if he culpably violates a substantial duty of contract. If the Vendor in this event did not act on deliberate intention he shall have to compensate only the foreseeable, typically occurring damage.
4. All liability for delay in cases of culpable damage to life or health and bodily injury shall remain unaffected.
5. In so far as nothing different has been stipulated by these clauses, all liability for damages caused by delay shall be excluded.

IX. Liability for damages

1. If a product has been specified it is free of defects if approved tolerances of manufacturing have been complied with. The Purchaser shall invoke a purpose of use intended by him only in case it was explicitly agreed upon in writing.
2. Evident defects have to be notified and claimed for vis-à-vis the Vendor immediately. In case of a defect caused by the Vendor the Purchaser has the choice between rectification of defects or replacement delivery. In case of rectification of defects the Vendor has to pay for all necessary expenses, in particular for costs of travel and transport, work and material, insofar as these costs have not been enhanced as a consequence of bringing the purchased item to a place different from the place of performance.
3. If the supplementary performance fails the Purchaser shall according to his choice either have the right to rescission or to reduction of the price.
4. The Vendor is liable pursuant to the statutory provisions if he fraudulently conceals a defect or if he has furnished a guarantee of quality.
5. The Vendor is liable pursuant to the statutory provisions in the event of damages being due to gross negligence or wilful misconduct by the Vendor, his representatives or auxiliary persons. In case of gross negligence the Vendor shall have to compensate only the foreseeable, typically occurring damage.
6. The Vendor is liable pursuant to the legal provisions if he culpably violates a substantial duty of contract. If the Vendor in this event did not act on deliberate intention he shall have to compensate only the foreseeable, typically occurring damage.
7. All claims in cases of culpable damage to life or health and bodily injury as well as claims according to the Produkthaftungsgesetz (German Product Liability Act) shall remain unaffected.
8. Insofar as nothing different has been stipulated by these clauses, all liability for damages shall be excluded.
9. All rights according to § 437 BGB (German Civil Law Code) prescribe in 12 months after the passing of risk unless goods which according to their common application have been used for construction and have caused the deficiency of the building are concerned.
10. In the event of a delivery recourse in accordance with §§ 478, 479 BGB (German Civil Law Code), the statutory prescription period applies. It is 5 years, beginning with the surrender of the defect good.

X. Combined total liability

1. For further damages the Vendor is – regardless of the asserted claim's legal nature, in particular as far as claims on the legal grounds of culpa in contrahendo, other breaches of duty or for damage to property according to § 823 BGB (German Civil Law code) are concerned – as stipulated in IX. ## 5, 6 and 7. All further liability shall be excluded.
2. Insofar as claims for damages of the Vendor are restricted or excluded by these stipulations, this shall also apply as far as the personal liability of members of staff, employees, agents and auxiliary persons of the Vendor is concerned.
3. For the prescription of all rights which are not subject to the prescription because of a defect of a good, a preclusion period of 18 months shall apply, beginning at the time when the Purchaser comes to know or would have come to know without gross negligence the damage and the person who caused it.

XI. Counterclaims, assignability

1. The Purchaser shall only be entitled to set-off rights if his counterclaims have been recognised by declaratory judgement, are uncontested or have been acknowledged by the Vendor. Moreover, the Purchaser shall be in so far only authorised to exercise a right of retention if his counterclaim is based on the same contractual relationship.
2. The Purchaser can only assign rights from agreements which he has concluded with the Vendor if he has obtained the Vendor's approval herefor.

XII. Acceptance

1. The Purchaser shall be entitled to reject acceptance if significant defects are assessed. If a system or product can be used by the Purchaser with limitations, acceptance hereof shall be deemed to be conditional.
2. If the Purchaser defaults in acceptance, acceptance of the delivered items shall be deemed to be fictive at this point of time.

XIII. Right of the Vendor in terms of rescission

1. In the event of an unforeseen event which was not caused by the Vendor and which substantially changes the economic significance or content of the good/service or in so far has a substantial influence on the Vendor's business and in the event of an impossibility turning out at a later point of time which was not caused by the Vendor, the Vendor shall be entitled to rescind in full or in part from the agreement, unless a partial rescission cannot reasonably be expected of the Purchaser. Further statutory rescission rights shall not be affected by this regulation.
2. The Purchaser shall not be entitled to claim damages of any sort in case of a such-like rescission by the Vendor. If the Vendor intends to make use of his right to rescind, he has to inform the Purchaser at all events, even if initially an extension of the delivery period has been agreed upon with the Purchaser.

XIV. Place of fulfilment, venue, miscellaneous

1. Insofar no other regulation has been explicitly agreed, the registered office of the Vendor shall be deemed to be the place of fulfilment.
2. If the Purchaser is a merchant, legal entity of public law or holder of a special public-law fund, the competent court at the Vendor's registered office address shall be the venue. The Vendor shall, however, be authorised to sue the Vendor at any other permissible venue.
3. If any term stipulated in these terms and conditions or any part of a term is or becomes invalid, the remaining terms and conditions resp. the remaining part of the term in concern shall remain valid.

XV. International contracting parties

- Insofar as the Vendor has his branch office in a foreign country, the following shall be applicable in supplementation and, if applicable, in deviation of the regulations stipulated above:
1. Exclusively German law shall be applicable.
 2. In the event of contradictory contractual offers and declarations of acceptance, the delivery shall be deemed to be a new quote according to the conditions stipulated in the Vendor's last declaration.
 3. If the Vendor owes a specific obligation, he shall only owe a substitute delivery in the event of a faulty delivery, if he agrees hereto.
 4. The Purchaser shall forfeit the right to refer to the lack of conformity of the goods with the agreement, if he does not inform the Vendor hereof at the latest within 12 months after the goods have actually been surrendered to him.
 5. If any of the regulations stipulated in clause XV. contradict the other standard terms of delivery and payment, the regulation stipulated in clause XV. shall be deemed to be overriding.
 6. The contractual language shall be German. If the contracting parties additionally use another language, the German wording shall have priority.