

# Terms and Conditions for Delivery and Payment

All supplies and services from our Rietheim, Germany plant are subject to the "General Conditions of Supply for Products and Services of the Electronic Industry" (ZVEI). Any divergent conditions are set in italics.

The foremost articles are listed hereto:

## 1. General conditions

The scope of the supplies or services (hereinafter called "Supplies") are defined by the written declarations of both parties to the contract. General terms and conditions of the Purchaser apply only where expressly accepted in writing by the Supplier or service provider (hereinafter called "Supplier").

Partial Supplies are permissible where they can be reasonably expected of the Purchaser.

## 2. Prices and terms of payment

Our prices are net prices, without V.A.T. or packaging charges and are valid from factory premises.

*The minimum order sum for inland deliveries is 30.- EUR, for overseas deliveries 130.- EUR. A surcharge of 6.- EUR will be imposed for inland orders of less than the above sum and 13.- EUR for overseas orders of less than the above sum.*

*All payments are to be effected at the latest within 30 days of the date of invoice unless otherwise stated. WERMA grants 2% discount for payments effected within 14 days from the date of invoice.*

*Initial deliveries are on the basis of payment in advance or payment on delivery.*

## 3. Retention of title

The items of Supplies (Secured Goods) remain property of the Supplier until each and every claim against the Purchaser to which the Supplier is entitled under this business relationship has been duly satisfied. If the value of all security rights of the Supplier exceeds the value of all secured claims by more than 20%, the Supplier will release a corresponding part of the security rights at the Purchaser's request.

In cases of breaches of liabilities on the part of the Purchaser, in particular a default in payment, the Supplier is entitled to termination and to take back the goods. *The taking back or assertion of the retention of title does not require termination by the Supplier. No termination of contract shall arise in these circumstances or on a seizure of the goods by the Supplier, unless the Supplier should have expressly declared this.*

*WERMA's proprietary right expires only upon full payment.*

## 4. Time for delivery and delay

Observance of the *stipulated* time for delivery is conditional upon the timely receipt of all documents, necessary permits and releases, especially of plans to be provided by the Purchaser, as well as fulfilment of the agreed terms of payment and other obligations by the Purchaser.

If non-observance of the time for delivery is due to force majeure such as mobilization, war, riot or similar events, e.g. strike or lock-out, such time shall be extended accordingly.

## 5. Transfer of risk

Even where "carriage paid" delivery has been agreed, the risk passes to the Purchaser as follows:

If the supply does not include assembly or erection, when goods have been delivered to or picked up by carrier. At the Purchaser's request and expense, supplies can be insured by the Supplier against the ordinary risks of transport.

## 6. Taking delivery

The purchaser may not refuse acceptance of deliveries on account of minor defects.

*Goods may only be returned using the standard postal service and upon agreement with WERMA. A surcharge of 20% of the product value is payable for the return of standard goods, that is at least 30.- EUR to cover the cost of unpacking, checking and re-packing in the interests of the next purchaser. Damaged goods and special articles (i.e. all articles which are not listed with order number in the currently valid catalogue) may not be returned.*

## 7. Warranty

The Supplier shall be liable for material defects as follows:

All those parts or services which display a material defect within the limitation period (regardless of the period of operation) shall at the discretion of the Supplier be improved subsequently without payment, re-delivered or re-rendered, provided that the cause of this was already present at the time of passing of risk.

Claims for material defect shall be barred after 24 months. This shall not apply in as far as statute prescribes longer periods by virtue of sections 438 (1) (2) (buildings and building materials), 479 (1) (claim under a right of recourse) and 634a (1) (2) (building defects) BGB.

The Purchaser shall notify the Supplier in writing of material defects without delay.

Payments by the Purchaser may be withheld on notification of defect to such an extent as bears a reasonable relationship to the material defects arising. The Purchaser may only withhold payments if notification of a defect is given, for which there is unquestionable justification. The Supplier may require the Purchaser to reimburse the expenses arising from cases where the notification of defect is unjustifiable.

The Supplier shall initially always be allowed the opportunity of subsequent performance within a reasonable period of time. The Purchaser may rescind the contract or reduce the payment regardless of any claims for damages in pursuance of section 9 hereto, if the subsequent performance shall fail to be effective.

Claims based on a defect shall not arise merely for a slight discrepancy from the agreed characteristic, for merely slight impairment

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to usefulness, for natural wear or loss which arises following the passing of risk as a consequence of improper or negligent treatment, excessive use, unsuitable operating materials, defective building work, unsuitable building ground or which arise by reason of particular external influences which are not anticipated by the contract, as well as for defects in software which are not reproducible. No claims based on a defect shall similarly arise for the consequences resulting from improper modifications made or improper repair work carried out by the Purchaser or third party.

Claims by the Purchaser for expenses necessitated for the purposes of subsequent performance, in particular costs of carriage, transport, work and materials are excluded to such an extent as the expenses increase because the subject matter of the delivery has been subsequently conveyed to a location other than the place of business of the Purchaser, unless the conveyance corresponds with its use according to contract.

Legal claims by the Purchaser against the Supplier under a right of recourse shall only arise inasmuch as the Purchaser has not entered into any agreements with its customer over and above the statutory claims arising for defects. The preceding paragraph shall further apply correspondingly to the extent of the claims under a right of recourse of the Purchaser against the Supplier.

Furthermore, section 9 hereto (further liability) shall apply to claims for damages. More far-reaching or further claims by the Purchaser against the Supplier and those acting on its behalf on account of a defect other than those regulated in this section are excluded.

## 8. Impossibility of performance, revision of contract

The Purchaser may demand damages to such extent as the delivery is impossible unless the Supplier is not responsible for the impossibility. The claim for damages of the Purchaser shall however be limited to 10 % of the value of that part of the delivery which can not be taken into useful operation by reason of the impossibility. This limitation shall not apply in so far as liability is imposed by law in cases of wilfulness, gross negligence or on account of death, physical injury or impairment to health. An alteration in the onus to proof to the detriment of the Purchaser is not connected herewith. The right of the Purchaser to rescind the contract shall remain unaffected.

Where unforeseeable events as described in Art. 4 paragraph 2 substantially change the economic importance or the contents of the supplies or considerably affect the Supplier's business, the contract will be adapted accordingly with due regard to the principle of good faith. Where this is not economically reasonable, the Supplier has the right to terminate the contract. If the Supplier wants to make use of this right of termination, he has to notify the Purchaser in writing immediately after becoming aware of the significance of the event. This applies even where at first an extension of the delivery time had been agreed with the Purchaser.

## 9. Further liability

Claims by the Purchaser for compensation and reimbursement of expenses (hereinafter called "further liability") on whatever legal basis, in particular on account of breach of duties arising out of the contractual obligation and from tortious acts, are excluded.

This shall not apply where liability is imposed by law, for example, pursuant to the law of product liability, in cases of wilfulness, gross negligence, on account of death, physical injury or impairment to health, or on account of breach of material contractual obligations. The further liability for breach of material contractual obligations shall however be limited to foreseeable damage typical for a contract, unless wilfulness or gross negligence is present or liability exists on account of death, physical injury or impairment to health. An alteration in the onus of proof to the detriment of the Purchaser is not connected with the said provisions.

## 10. Competent Court

Sole competent court for any dispute arising directly or indirectly from the above contract is D-78532 Tuttlingen.

All contractual business is regulated by German law, not regarding the United Nations Agreement concerning international sales (CISG).

## 11. Validity of the contract

Even in case of legal invalidity of individual items, the remaining parts of the contract remain binding save where adherence to the contract would mean an undue hardship on one of the parties.

## 12. Alterations

*WERMA reserves the right to alter its products to the end of technical improvement.*

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