

General Terms of Delivery and Payments of C.D. Wälzholz KG

I. General provisions

- 1) The delivery of our products and services is effected only on the basis of the following terms and conditions. The customer's terms of purchase are herewith excluded.
- 2) Our quotations are submitted without obligation. Contracts and other agreements only become upon written confirmation by C.D. Wälzholz.

II. Prices, conditions of payment

- 1) Unless otherwise agreed, our prices are calculated ex works; inland deliveries are subject to value added tax.
- 2) In the event that considerable changes in certain cost factors occur between signing the contract and the delivery date, in particular in costs for wages, prematerial or freight, the agreed price may be adjusted to an appropriate extent in accordance with the significance of the decisive cost factor. Payment shall be effected without deduction and should be received no later than the 15th of the month following delivery.
- 3) If the payment date is exceeded, interest will be charged at the rate invoiced by merchant banks on open current account advances, but at least interest at a rate of 4% above the current discount rate of the Deutsche Bundesbank.
- 4) The Purchaser is only entitled to set off undisputed or legally acknowledged claims. He is only entitled to retaining liens if they are based on the same contractual relationship.
- 5) If, subsequent to entering into the contract, circumstances arise which result in a considerable deterioration of the financial position which could endanger our claim to payment, we are entitled to set a due date for the amount involved, regardless of the term of any bills of exchange received in payment.
- 6) If the Purchaser defaults in payment, thus indicating a risk to our claim, we are entitled to forbid any further processing of the delivered goods and recall the same. Such a recall does not constitute a cancellation of the contract.
- 7) In the cases depicted in subclauses 6 and 7 above, we are entitled to revoke any authorizations granted to collect debts arising from the resale of the delivered material and to demand advance payment for any outstanding deliveries.
- 8) The statutory regulations relating to default of payment remain unaffected.

III. Dimensions, weights, quality

- 1) Deviations from the dimensions, weights and quality are permissible in accordance with DIN or the established practice.
- 2) Weights will be determined on our calibrated scales and are decisive for invoicing. Packagings are included when weighting. Documentation of the weight is given by submission of the weight note.
- 3) At our request, packaging materials are to be returned to us carriage prepaid. If in such cases the packaging materials are returned in a condition which permit their reuse, two-thirds of the invoiced value will be credited to the Purchaser.

IV. Shipment and transfer of risk

- 1) In the absence of special instruction regarding the route and means of transport and the nomination of a freight forwarder or carrier, these matters will be decided by us.
- 2) If loading or transportation of the goods is delayed for any reason for which the Purchaser is responsible, we are entitled at our discretion to store the goods, to take all suitable measures to preserve the goods, and to invoice the goods as delivered. This also applies if goods which have been declared ready for shipment are not called up within 4 days. The statutory regulations relating to delayed acceptance remain unaffected.
- 3) In the event of transport damage the Purchaser shall have a statement of facts drawn up by the responsible quarters without delay.
- 4) All risk passes to the Purchaser upon transfer of the goods to the freight forwarder or carrier, at latest however upon leaving the plant or warehouse.

V. Delivery periods, delivery dates

- 1) The agreed delivery periods are only applicable provided all details of the contract have been clarified in good time and the Purchaser has discharged all his obligations promptly.
- 2) If the Purchaser fails to fulfil any contractual obligations in time – including cooperative or accessory obligations – such as opening a letter of credit, providing national or foreign certification, effecting an advance payment, or similar, we are entitled to postpone our delivery periods and dates within reason – without prejudice to any rights arising from the delay on the part of the Purchaser – to correspond with the requirements of our production process.
- 3) The time of leaving our plant determines the adherence to delivery periods and dates. If, through no fault of ours, the goods cannot be dispatched on time, the delivery periods and dates shall be regarded as met upon notifying that the goods are ready for dispatch.
- 4) If we are hindered in fulfilling our obligations by the occurrence of unforeseen events which affect us or our suppliers and which could not be averted, even with all reasonable diligence appropriate to the circumstances (e.g. by war, intervention on high authority, civil unrest, Acts of God, accidents, other industrial conflicts and delays in the delivery of essential factory supplies or prematerials, also including strikes or lockout actions), the delivery period shall be extended by the duration of the impediment and a suitable initial setting-up time. If the delivery is made impossible or unconscionable due to such as hindrance, we are entitled to revoke the contract. The Purchaser has the same right if the acceptance of the goods is unconscionable due to the delay; however the Purchaser's right of cancellation shall extend only to that part of the contract which has not yet been fulfilled.

VI. Guarantee

- 1) In the case of justified notices of defect issued in good time we shall take faulty goods back and supply replacements in their place. Alternatively, we are entitled to repair the faulty goods. The Purchaser is only entitled to statutory warranty rights if we do not fulfil these obligations. In cases where there is a failure of assured qualifications we are only liable for compensation of damages to the extent that the assurance pursued the purpose of safeguarding the Purchaser against just those damages incurred.
- 2) The Purchaser shall immediately provide us with the opportunity to satisfy ourselves of the fault and in particular to make the rejected goods or samples of the same available to us, on request.
- 3) Once an agreed acceptance procedure has been carried out, any complaints which are determinable by such acceptance procedures are excluded.
- 4) In the case of goods which have been sold as degraded material – e.g. so called II-a material – the Purchaser is not entitled to any warranty rights in respect of declared faults and such faults which are normally to be expected.

VII. Limitation of liability

Unless otherwise specified in these terms and conditions, we are only liable for damages arising from the infringement of contractual or non-contractual obligations in cases of gross negligence or intent. Claims in accordance with product liability legislation remain unaffected.

VIII. Retention of ownership

- 1) All delivered goods remain our property (retained goods) until all claims have been settled, in particular the respective payments due to us within the scope of the business relationship. This applies also for future and contingent claims, e.g. arising from any acceptor's bills.
- 2) For us as manufacturers, the processing and finishing of the retained goods is carried out within the meaning of § 950 of the German Civil Code, without any obligation on our part. The processed and finished goods shall be regarded as retained goods within the sense of subclause 1.
- 3) In the case of the Purchaser processing, incorporating and intermixing the retained goods with other goods, we are entitled to a co-ownership in the new article in proportion of the invoiced value of the retained goods to the invoiced value of the other goods employed. If our property ceases to exist as the result of the incorporation, intermixing or processing, the Purchaser herewith assigns to us his rightful ownership or contingent interest in the new stock or article to the extent of the invoiced value of the retained goods, in the case of processing in proportion of the invoiced value of the retained goods to the invoiced value of the other goods used, and shall hold the same free of charge on our behalf. Our co-ownership rights shall be regarded as retained goods within the meaning of subclause 1.
- 4) The Purchaser may only resell the retained goods in the course of normal business transactions at his usual terms of business and in so far as he is not in default. He is not entitled to otherwise dispose of the retained goods.
- 5) Claims of the Purchaser arising from the resale of the retained goods are herewith assigned to us. They shall be regarded as security to the same extent as the retained goods within the meaning of subclause 1.
- 6) If the retained goods are resold by the Purchaser in conjunction with other goods, the claims arising from the resale are herewith assigned to us on in proportion of the invoiced value of the retained goods to the invoiced value of the other goods. In the event of reselling goods in which we hold co-ownership shares in accordance with subclause 3, a portion of the claim in proportion to our share of co-ownership shall be assigned to us.
- 7) The Purchaser is entitled to collect claims arising from the resale.
- 8) If the value of the existing security exceeds the assured claims by more than 10% in total, we are obliged to release securities at our optional the Purchaser's request.

IX. Applicable law

The laws of the Federal Republic of Germany shall apply, excluding the uniform law regarding the international purchase of movable objects and the uniform law regarding the conclusion of international sales contracts relating to movable objects.

X. Place of performance and venue

The place of performance and venue for both contractual parties is Hagen. We are also entitled to bring an action against the Purchaser at his general place of jurisdiction.