

General Terms and Conditions of Sale, Delivery and Payment

of DWT GmbH, Gelsenkirchen

applicable in respect of trading with:

a person, who in concluding the Contract is acting in commission of his or her commercial or independent professional occupation (Contractor);

legal person under public law or special fund under public law

§ 1 Quotations and closure of contract

The conditions which apply to all quotations and orders shall exclusively be those which appear hereunder. It shall be agreed between the customer and DWT on closure of the first order under this Contract that these conditions shall form the basis for all subsequent business – also that which is agreed orally, and in particular by telephone.

Quotations from DWT shall not be binding. Orders submitted shall not be binding until confirmed by DWT in writing. The ordering party is committed to accept consignments within four weeks of receipt of the order by DWT.

To be enforceable, additions, alterations or subsidiary agreements require to be confirmed by DWT in writing.

DWT shall retain title to and copyright of all quotations, drawings and other documentation whether in material or immaterial form – and also in electronic form. It is forbidden to permit third parties access to any such items.

Insofar as the written form may be specified in these General Terms of Sale, Delivery and Payment, this condition is deemed to be fulfilled by a notification given per telefax or in electronic form (e-mail).

§ 2 Scope of obligation to deliver

The written confirmation of order by DWT shall be decisive in laying down the scope of delivery.

Measurements, weights, illustrations, drawings and other documents belonging to the quotations shall only be deemed to be guidelines, unless they are expressly designated as binding.

Partial deliveries shall be permitted, provided that this may be regarded as reasonable for the ordering party.

§ 3 Prices and Terms of Payment

All prices apply ex-works, that is to say from DWT's operational premises and for goods manufactured abroad, free from German border, exclusive of packing, and subject to the appropriate legal rate of VAT.

Payment of the purchase price, provided no other terms have been agreed, is to be made at the latest within 14 days of date of invoice, without deduction.

If terms of payment are not met, or if after conclusion of the Contract DWT becomes aware that payment of the amount due is at risk due to financial insecurity of the ordering party, DWT shall be entitled to perform any outstanding deliveries and services only against payment in advance or suitable security being lodged.

The right of retention of payment or of offsetting against counter-claims may only be exercised by the ordering party to the extent that his counter-claims are either not in dispute or have been legally established.

§ 4 Delivery date

An agreed date for delivery shall be deemed to have been met if by the expiry of that date the goods ordered shall have left the warehouse of DWT or the manufacturer's, or the ordering party shall have been notified of the goods being ready for collection.

In the case of strikes, or other unforeseen hindrances over which DWT has no influence, occurring or in the case of delays for which the manufacturer is responsible, the delivery period shall be extended to a reasonable extent. This shall also apply when the hindrances occur during the period of an already-existing delay.

If the ordering party incurs loss or damage due to a delay for which DWT is held responsible, in particular in the case of a delivery date firmly agreed with DWT, the ordering party shall then be entitled to claim payment in compensation. In the case of *Culpa levis*, this shall be every full week of failure to meet the due date 1/100, or a maximum total of 5/100 of the value of the partial or total net order not delivered punctually as a result of the delay. All further claims in respect of culpable delay are excluded in cases of *Culpa levis*.

If dispatch is delayed as a result of circumstances for which the party ordering is responsible, as from the 14th day from the day of notification of readiness for collection, he will be charged for any costs of storage at the party's premises and in the case of storage at DWT an amount of 1/100 of the invoice amount per month.

DWT shall be entitled, after allowing an additional period which expires fruitlessly, to dispose of the goods elsewhere and then to deliver to the party ordering subject to a further reasonable extension of the delivery period.

Maintenance of the delivery date presupposes the ordering party's fulfilment of his obligations under the Contract.

§ 5 Passage of Risk and Acceptance of Delivery

Risk passes to the ordering party with handover of the consignment to the forwarding agent, carrier or collector, or in any event at the latest when the goods leave either DWT's warehouse or that of the manufacturing company. Liability is similarly transferred to the customer in the case of goods leaving DWT's warehouse or that of the manufacturing company, even when carried by DWT's own transport.

At the request and expense of the party ordering, DWT will arrange for the consignment to be insured against breakage, transport, fire and water damage.

If dispatch is delayed due to circumstances for which DWT are not responsible, risk shall pass to the ordering party as from the day on which notification of readiness for collection is given. At the request of the party ordering, DWT is obliged to have the consignment insured against damage. Such insurance shall be at the ordering party's expense.

Goods delivered, even when they display minor faults, are to be accepted by the ordering party, notwithstanding the rights provided for in § 7.

Partial deliveries shall be permitted.

§ 6 Retention of Title

DWT shall retain right of title to all consignments until full settlement is received in respect of all their claims arising out of the business relationship with the party ordering. In the case of open account, the whole of the retention goods shall serve as security for the account outstanding.

If the value of the goods serving as security for DWT claims exceeds the amount outstanding against the ordering party by more than 50 % DWT is obliged to release its choice of corresponding security at the request of the ordering party.

The ordering party shall neither pledge nor assign the consignment as security. In the case of attachment as well as confiscation or any similar third-party disposition, he shall notify DWT of the circumstances without delay.

In the case of breach of contract by the ordering party, in particular in case of delay in settlement, DWT shall be entitled to repossession after reminder, and the ordering party shall be obliged to hand over the goods.

Making claim of retention of title and also attachment of the consignment on the part of DWT shall not be deemed to constitute withdrawal from the Contract.

Should DWT claim handover of the retention goods, DWT shall be entitled to dispose of these after advance warning by means of sale to third parties or by buying-in at trade price, which at the request of the ordering party shall be established by an officially-appointed specialist. In the case of sale to a third party, the proceeds of the sale less any expenses incurred and an inclusive marketing charge of 15/100 of those sale proceeds shall be set off against the liabilities of the ordering party.

DWT shall be entitled to insure the consignment at the ordering party's expense against fire, water and other damage, provided that the ordering party cannot provide evidence of having taken out the corresponding insurance.

§ 7 Liability for Faults in Delivery

All those parts which within a period of 12 months following delivery display a rehibitory defect resulting from a circumstance which existed before passage of risk are in accordance with DWT's reasonable judgement and at their option to be reworked or replacements are to be delivered, free of charge. Claims in respect of rehibitory defects – on whatsoever legal basis – lapse after 12 months after delivery. This does not apply in the case of building faults or building components and these have caused the rehibitory defect. By way

of deviation from sentence 1 the legal periods apply in respect of claims relating to the Product Liability Legislation as well as cases of deliberate act or malicious behaviour. Parts replaced become the property of DWT.

Except as otherwise expressly agreed, the periods apply in accordance with Figure 1, when the goods delivered are employed in single-shift operation. No liability is accepted in respect of damage resulting from fair wear-and-tear.

The ordering party must notify DWT without delay, and in any event within one week of receipt of the consignment, of any fault in writing. Faults which are undetectable within this period even with a thorough examination are to be notified to DWT in writing without delay on their discovery.

No liability is accepted in respect of damage caused by the following:

- unsuitable application or inexpert handling
- faulty assembly or taking into service by the ordering party or by third parties
- faulty or careless handling of the consignment, in particular with regard to the accompanying instructions for use
- excessive loading or overuse
- use of unsuitable power, in particular the use of compressed air not generated in accordance with specification in the operating instructions or exchange materials, which expression shall include the use of any other than manufacturer's original equipment and spare parts and accessories.

The party ordering is obliged in accordance with agreement reached with DWT to allow the time and opportunity for such reworking or replacement delivery as appear to DWT to be reasonably necessary to be carried out; otherwise DWT shall be relieved of responsibility for all consequences thereof. Only in urgent cases where operational safety is at risk, of which DWT must be notified immediately, or if DWT is in arrears with the correction of the fault shall the ordering party be entitled to have the fault corrected either by himself or a third party, and to claim from DWT reasonable reimbursement of his incurred costs.

If complaint is justified, the faulty product shall, at DWT's option and expense, be

- sent to DWT for repair and subsequent return
- or the ordering party shall keep the faulty product ready and service personnel from DWT shall be sent to the ordering party to undertake the repair.

If the ordering party stipulates that the reworking is carried out at some place of his choice, DWT may agree with this stipulation in which case parts replaced will not be invoiced while working time and travelling expenses, charged at DWT's standard rates, shall be paid by the ordering party.

Liability is repudiated in respect of all consequences arising from improper alterations or repair work carried out either by the ordering party or any third party without prior authority from DWT having been received.

For any further claims by the ordering party in respect of faults in unused items forming part of the consignments, the regulations in § 8 Figure 5 Sentence 1 apply.

More extensive claims for compensation are excluded.

Used items forming part of consignments delivered shall be sold under exclusion of any liability for faults, unless DWT has maliciously remained silent in respect of the fault or guaranteed its absence.

Provided nothing to the contrary is agreed, DWT will ensure its deliveries domestically are free of both patent rights and copyright of third parties. Should notwithstanding this a corresponding protected rights infringement occur, DWT shall either obtain an appropriate user right from the third party or modify the item delivered in such a manner that third party rights are no longer infringed. To the extent that this is not possible for DWT under reasonable or equitable conditions, both the ordering party as well as DWT shall be entitled to withdraw from the Contract.

In addition, in cases of deficiency in title, the provisions of § 7 shall apply accordingly, whereby claims of the ordering party shall only be valid when he has notified DWT of any third-party claims in writing without delay, has neither directly nor indirectly acknowledged an act claimed as a violation, all avenues of defence remain available to DWT without restriction, the legal violation is not based on the claim that the ordering party has altered the article delivered or has used it in any way at variance with the terms of the Contract or the deficiency in title is to be traced back to an instruction of the ordering party.

§ 8 Right of the Ordering Party of Withdrawal or Abatement and Miscellaneous Liabilities of DWT

The ordering party may withdraw from the Contract, if DWT no longer finds it possible to carry out its part of the Contract in toto. The same applies in the case of insolvency of DWT. The ordering party may also withdraw from the Contract if when ordering articles of the same type carrying out part of the delivery in the quantities required is not possible, and he has a justifiable interest in refusing partial delivery. If this is not the case, the ordering party may reduce the counter-performance to an appropriate extent.

If a delay in performance within the meaning of § 4 occurs and the ordering party lays down a reasonable extension period for DWT, and if this extension period is not respected, then the ordering party shall be entitled to withdraw from the Contract.

If the impossibility comes about during a delay in acceptance or is otherwise the ordering party's responsibility, this party shall remain liable to counter-performance.

The ordering party further has right of withdrawal if DWT permits a reasonable extension allowed him to correct or repair a fault for which he is responsible within the meaning of the terms of delivery to expire without result due to his own negligence. The right to withdraw also applies in other cases of failure of reworking or failure of replacement deliveries by DWT.

Further claims for restitution of loss of any kind, including loss or damage not occurring to the article delivered, only apply

- in cases of gross negligence
- in case of personal disablement or injury, or injury to health
- in cases of culpable dereliction of essential duties under the Contract, to the extent that the purpose of the Contract is put at risk, in respect of the loss or damage which might reasonably be expected to arise in connection with such a contract
- in those cases in which in accordance with product liability legislation when there are faults in the article supplied, liability exists for personal injury or material damage in respect of privately-used articles
- in the absence of properties specifically assured, when the purpose of the assurance was to provide cover for the ordering party against damages not occurring to the actual article(s) delivered
- if DWT has maliciously remained silent in respect of the fault(s) or guaranteed its/their absence.

Otherwise further-reaching claims in particular in respect of termination, abatement or compensation are excluded.

§ 9 Liability for Ancillary Obligations

If through the fault of DWT the item(s) supplied can, in consequence of omission to execute, or faulty execution of, suggestions and decisions made either before or after conclusion of this contract, as well as other ancillary contractual obligations – in particular instructions for operation and maintenance of the item(s) supplied – not be utilised in accordance with the contract by the ordering party, the provisions of regulations in §§ 7 and 8 shall apply accordingly, to the exclusion of any further entitlement to claims by the ordering party.

§ 10 Court of Jurisdiction / Place of Fulfilment

Place of fulfilment in respect of payments and exclusive court of jurisdiction – including actions in trial by record and actions related to bills of exchange – is, when the ordering party is a company, a legal person under public law or special fund under public law, for both parts and for all current and future claims arising from the business conditions the Headquarters of DWT or – at its option – the location of the branch which has concluded the Contract.