

## **General Terms and Conditions of Sale and Delivery WIGO Chemie GmbH**

### **§ 1 Scope**

1. The following General Terms and Conditions of Delivery shall exclusively apply to all deliveries, sales and other services (hereinafter referred to as "Deliveries") by the WIGO Chemie GmbH (hereinafter referred to as "Seller") insofar as no other agreements have been made in writing. They shall only apply to legal transactions which the Seller concludes with an entrepreneur, a legal entity under public law or a special fund under public law [§ 310 para. 1 of the German Civil Code (Bürgerliches Gesetzbuch, BGB)] (hereinafter referred to as "Buyer"); these Terms and Conditions of Delivery shall not apply to transactions entered into with consumers.
2. Should the Buyer's declaration of offer or acceptance contain deviating terms and conditions, then these shall apply only if the Seller has confirmed them in writing. The following terms and conditions of sale and delivery shall also apply in the event that, given the Buyer's conflicting or deviating terms and conditions, the Deliveries are being executed without reservation.
3. In the case of regular business relations these terms and conditions shall also apply to future transactions, which make no express reference to them, insofar as the Buyer has received these terms and conditions with the Seller's confirmation of a previous order.

### **§ 2 Offer - Bidding documents**

1. The Seller's offers are not binding. An obligation on part of the Seller to effect delivery shall be constituted only through the acceptance of and only for each individual order. This shall also and in particular apply to outline agreements, contracts for delivery by instalment and release order contracts.
2. Documents forming part of the offer such as drawings, images, technical data specifications, references to standards as well as statements in advertising materials do not constitute any quality descriptions, quality warranties or guarantees insofar as they are not expressly and in writing designated as such. Agreements and other statements, in particular oral supplementary agreements, commitments, guarantees and other statements as to quality and applicability of the goods to be delivered, shall become binding only through the Seller's written confirmation.
3. The Seller shall retain ownership and copyrights of documents such as drawings, images, technical data specifications etc. They may be duplicated or disclosed to third parties only with the Seller's prior written approval. They are to be returned to the Seller subsequent to the processing of the contract or breakdown of contract negotiations respectively.

### **§ 3 Prices**

1. Acceptance of the order is effected at the prices quoted in the respective price list current at the time of the order being accepted insofar as nothing to the contrary follows from the Seller's offer. All prices are quoted Ex Works exclusive of costs of packaging, shipping and insurance plus statutory value-added tax and any customs duties. The Seller will according to its expertise take care of packaging, protective and/or transportation equipment - at the Buyer's expense.

2. The prices are applicable to orders of standard shipping units, i. e. one europalette or several such palettes. With smaller purchase quantities the Seller is entitled to increase the prices as compared to the price list as appears reasonable [§ 315 of the German Civil Code (Bürgerliches Gesetzbuch, BGB)].

3. With follow-up orders there is no obligation as to previous price lists.

3.4 If charges or other third-party costs beyond the Seller's influence, which are implicitly included in the agreed price, change or if they are newly incurred more than four weeks subsequent to contract conclusion, the Seller is entitled to increase prices to a corresponding extent as appears reasonable [§ 315 of the German Civil Code (Bürgerliches Gesetzbuch, BGB)].

### **§ 4 Delivery terms**

1. Unless expressly agreed otherwise, the stipulated delivery period is approximated. It shall apply only if confirmed by the Seller in writing. The agreed delivery period commences with the Seller's dispatch of the order confirmation, however, not prior to the Buyer's performance of obligations and advance performance obligations, particularly not prior to receipt of the necessary clarifications with regard to the order and not prior to the Buyer's producing of potential necessary records, permits, releases, raw materials and/or packaging materials and also not prior to receipt of agreed credits, guarantees and/or down payments.

2. The agreed delivery period has been complied with if by its expiration the delivery item has left the works or warehouse of the Seller or of a called-in supplier or - in case of pickup by the Buyer - notification as to readiness for shipment has been given. Goods ready for shipment shall be picked up without delay. This shall not apply if the agreed delivery period has not been exhausted.

3. The agreed delivery period shall be reasonably extended in the case of measures being taken in the context of labor disputes, in particular strikes and lockouts, as well as in the event of unforeseen impediments which lie beyond the intent and/or sphere of influence of the Seller (e. g. material supply difficulties, other supply bottlenecks, lack of means of transportation, authority interventions, insofar as such impediments do not solely concern the Seller) and insofar as such impediments can be shown to have more than an insignificant impact on the completion or delivery of the delivery item. The Seller shall neither be responsible for the aforementioned circumstances in the case that they occur during an already existing delay. The Seller shall in important cases inform the Buyer of the beginning and end of such impediments.

4. If the Buyer incurs a loss because of a delay due to the Seller's fault, then the Buyer is to the exclusion of further claims entitled to claim compensation for default. It shall for each full week of the delay amount to 0.5 %, altogether, however, to no more than 5 % of the value of that portion of the total delivery which, due to the delay, cannot be used on time or in accordance with the contract. The Seller shall in other respects be liable for damages based on delay in delivery only in accordance with the provisions in Art. 9.

5. If goods announced as ready for shipment are not picked up on time, then the Seller is entitled upon issuing a reminder and setting a time limit to ship or store them at the Buyer's expense and to immediately charge for them. The Seller, at its discretion, is also entitled to dispose of the goods otherwise and/or - insofar as the Seller is able and can be expected to - to supply the Buyer with different goods within a reasonably extended period. If the Seller disposes of the goods and if it is not possible and reasonable to supply the Buyer with different goods, then the Seller shall no longer be under contractual obligations to the Buyer with regard to the goods which have been disposed of otherwise; in this case the Buyer shall have no damage claim or any other comparable claims against the Seller. If the shipment is delayed at the Buyer's request, then, starting one month after notification of shipment readiness, the costs incurred for storage, however, no less than 1 % of the invoice amount, will be charged for each month.
6. If a delivery period has not been stipulated, the Seller is obligated to effect production and delivery without delay upon receipt of the order confirmation taking into consideration all the circumstances which are customary in a particular industry and company-specific (stock quantities, utilization of machines, seasonal effects, use of staff and energy).
7. Partial deliveries are permissible insofar as the Buyer is interested in the partial performance; partial deliveries are permissible by implication with contracts for delivery by instalments. Excess or short deliveries as customary in a particular industry are permissible up to a maximum of +/- 10 %. With release orders the Seller is entitled to produce the entire order quantity in full or have third parties produce it respectively. Potential requests for modifications may no longer be considered once the order has been placed, unless this has been expressly stipulated. Insofar as no binding agreements have been reached, release dates and quantities can be complied with only to the extent of the Seller's delivery and production feasibilities. If the goods are not called in accordance with the contract, the Seller is, subsequent to the setting and expiration of a reasonable grace period, entitled to charge for them as having been delivered.
8. If the quantities of goods at the Seller's disposal are not sufficient (e. g. due to self-supply not having been effected or production cutbacks having become necessary, as well as breakdowns of production equipment - altogether for reasons which the Seller is not responsible for, such as cases of force majeure - ) to satisfy all creditors of goods, then the Seller is entitled to make equal reductions in all delivery commitments; beyond that the Seller shall be exempt from any delivery commitments.
9. If the Seller draws on suppliers not or not to this extent used so far in order to be able to meet its delivery obligations and if an increase in the price of the goods ensues, then the Seller is entitled to add the extra costs hereby incurred to the purchase price, in fact also in the event that a fixed price had been agreed upon. If the assumption of the extra costs constitutes an unreasonable hardship for the Buyer, it is entitled to refuse the Seller's Deliveries and to withdraw from the contract for as long as the Seller charges the higher price.

## **§ 5 Shipping - Transfer of risk**

1. The Seller shall determine the shipping route and means of transportation as well as the forwarding agent and, if applicable, the carrier. If the transport, without any fault on the Seller's part, cannot take place along the designated route or to the designated location within the scheduled time, then the Seller is entitled to deliver the goods along a different route or to a different location. The extra costs hereby incurred shall be borne by the Buyer. The Buyer shall have the opportunity to comment prior to the change being effected.
2. The risk shall pass to the Buyer at the latest with the dispatch of the goods, in fact also in the event that partial deliveries are effected. At the Buyer's request, the Seller will at the Buyer's expense insure the goods against damage due to theft, breakage, transport, fire and water as well as other insurable risks. The Seller, at its discretion, is entitled to take out such insurance at the Buyer's expense in justified individual cases.

3. If the shipment is delayed due to circumstances for which the Buyer is responsible, then the risk shall pass to the customer from the day of shipment readiness; the Seller is obligated, however, to take out insurance at the Buyer's request and expense.

## **§ 6 Warranty**

1. The Buyer, notwithstanding its rights, shall take delivery of goods also in the event that they show defects. The Buyer is obligated to inspect the articles without delay and, if applicable, to give notice of a defect [§ 377 of the German Commercial Code (Handelsgesetzbuch, HGB)]. If the Seller, without being obligated to do so, takes back delivered goods or if it does not insist on the execution of closed contracts, then it is entitled to deduct 20 % of the invoice amount.

2. The Seller, on principle, does not give quality warranties, unless these have been expressly agreed upon in writing. In particular, specifications in catalogs, price lists and other information materials left to the Buyer are under no circumstances to be construed as quality warranties.

3. Quality, bulk, equipment and presentation are determined by the DIN / EN standards or material property specifications respectively valid at the time of conclusion of the contract, in their absence by trade custom.

4. For goods which within 12 months from delivery prove to be defective due to a circumstance existing prior to delivery, a supplementary performance shall be effected at the Seller's option. The aforementioned period will be reduced to end with the expiration date given on the packaging or a corresponding date on the material property specifications or on any other product description. The period set for the Seller to effect the supplementary performance shall be 15 weekdays at a minimum. The Seller is entitled to two efforts to effect the supplementary performance. If after the second effort the supplementary performance is considered to have failed, then the Buyer may reduce the purchase price or withdraw from the contract, unless something different results in particular from the nature of the goods or the defect or any other circumstances.

5. Except as provided in Art. 6.4, the Buyer's claims shall be subject to a one-year limitation period beginning with the delivery of goods. This shall not apply to (1) intent or fraudulent concealment of a defect, (2) deviating contents of a guarantee which the Seller has given pursuant to § 443 of the German Civil Code [Bürgerliches Gesetzbuch (BGB)] as well as (3) goods which according to their customary use have been used for a building and have caused the defectiveness of the building. The one-year limitation period shall not apply to claims for damages based on defects, if the damage is caused by gross negligence on part of the legal representatives or executives of the Seller or if it concerns personal injuries. It furthermore does not apply to defects contained in a property right or any third party's recorded right in land; in these cases the limitation period shall in fact be three years. The statutory provisions as to the limitation of possible recourse claims pursuant to § 479 of the German Civil Code [Bürgerliches Gesetzbuch (BGB)] as well as the limitation and preclusive periods according to the German Product Liability Act (Produkthaftungsgesetz) remain unaffected.

6. In other respects, the Seller shall be liable for damages based on a defect only in accordance with Art. 9.

7. Replaced goods shall become the property of the Seller. The Seller shall bear the costs of the supplementary performance inclusive of transportation costs if and as soon as the notification of defects proves to be justified. The Seller shall bear the costs of the supplementary performance only in so far as they will not be increased because delivery was made to a location different from the place of delivery. All rights based on the material defect shall not be applicable if the Buyer does not without delay afford the Seller the opportunity to verify the material defect and if the Buyer, in particular upon request and upon expiration of a reasonable grace period, does not make the rejected goods or samples thereof available.

## **§ 7. Terms of payment**

1. Payments shall be made without deduction within 30 days of the date and receipt of the invoice - no later than 30 days from the date of invoice and receipt of the articles; when paying within 8 days, deducting 2 % discount. Claims from invoices with net amounts of less than 50.00 Euros as well as for installations, repairs, molds and shares in costs of tools shall each be due immediately and paid net.
2. A discount shall pertain only to the invoice value applicable to the goods exclusive of freight and exclusive of any other ancillary costs. The availment of discounts requires that all of the Buyer's due payables have been fully settled at the time of the discount deduction.
3. A payment shall be considered to have been effected on time only if the proceeds with value date are available to the Seller in its bank account on the due date. All payments shall be made in Euros and free of charge to the account stipulated by the Seller.
4. Payments by bill or check shall require a special agreement. Bills and checks shall be accepted only for the sake of performance and at no charge to the Seller.
5. The statutory provisions regarding the consequences of a delayed payment shall apply. The Seller is entitled to charge for reminders a fee of 10.00 Euros per reminder plus value-added tax at the currently valid rate.
6. If subsequent to the conclusion of the contract it becomes apparent that the claim for payment is at risk due to the Buyer's insufficient financial capacity, then the Seller holds the rights under § 321 of the German Civil Code [Bürgerliches Gesetzbuch (BGB)] (defense of insecurity). The Seller is furthermore entitled to accelerate all claims not barred by limitation which have resulted from the current business relationship with the Buyer and to revoke the authorization pursuant to item 8.4 to resell the goods in the proper course of business and to collect the purchase price claims.
7. If subsequent to the conclusion of the contract a substantial worsening in the financial situation or solvency of the Buyer occurs, or if the Seller becomes aware of a previously existing deterioration and if the Buyer does not meet its financial obligations toward the Seller, then the Seller reserves the right to request payments prior to the agreed payment date, to deliver goods as yet unpaid only against appropriate security or, as an alternative, prepayment, and to request for incoming bills that payment be made prior to the expiration of the term. If during a reasonable grace period set by the Seller neither prepayments nor security are effected, then the Seller is according to statutory provisions entitled to rescind the contract.
8. A setoff with counterclaims against the claims for payment of the Seller shall be excluded, insofar as these have not been recognized by the Seller, declared nonlitigious or res judicata. The Seller is entitled to exercise a right of retention insofar as its counterclaim is based on the same contractual relationship.

## **§ 8 Retention of title**

- 1 All of the Seller's Deliveries are effected exclusively subject to retention of title (goods subject to retention of title). The ownership of the goods shall pass to the Buyer only if it has fulfilled its liabilities resulting from all existing business relationships between the Seller and the Buyer in their entirety. Inclusion of a claim against the Buyer in a current account and the confirmation of a balance shall not affect the retention of title.
2. If the Buyer falls behind schedule in fulfilling essential liabilities to the Seller as for example payment, then the Seller may without prejudice to any other rights take back the goods subject to retention of title subsequent to the expiration of a reasonable period. Taking back the goods shall not constitute a withdrawal from the contract.

3. The Buyer is obligated to take good care of the delivered goods; it is in particular obligated to comprehensively insure them at its own expense at replacement value against loss and damage and destruction, as e. g. against damage caused by fire, water and theft. The Buyer shall assign its claims from the insurance policies to the Seller already at this time.
4. The Buyer may neither pledge nor transfer by way of security the goods which the Seller has ownership of. However, the Buyer is in accordance with the following provisions entitled to resell the delivered goods in the proper course of business subject to a retention of title agreement. The aforementioned entitlement does not exist if the Buyer has in advance assigned or pledged the claim arising from the resale of the goods against its contractual partner - in each case effective - to third parties or has with the contractual partner made an agreement on nonassignability, or if the Buyer suspends payments, if it has filed a petition to open insolvency proceedings with regard to its property, if insolvency proceedings with regard to its property have been opened or the opening of such has been rejected for lack of assets, or if from other circumstances it can be concluded that the Buyer is not meeting its financial obligations. The Buyer shall already at this time assign to the Seller for the purpose of securing the performance of all of the Seller's claims against the Buyer all - also future and contingent - claims from a resale of the goods delivered by the Seller, including all ancillary rights, amounting to the value of the delivered goods and having priority over its remaining claims. The Seller shall herewith accept the assignment. As long and insofar as the Buyer meets its financial obligations to the Seller, it shall be authorized to collect from its customers the claims assigned to the Seller in the context of proper management. It shall not be entitled, however, to make with regard to these claims an agreement with its customers on current account transactions or a nonassignability, or to assign or pledge them to third parties. The Buyer shall upon request furnish all particulars and documentations to the Seller which are necessary to assert the rights of the Seller toward the customers of the Buyer. Furthermore, the Buyer shall upon request inform its customers of the agreement made and shall demand that they make payments to the Seller up to the amount of the Seller's claims against the Buyer. The Seller is also entitled to inform the Buyer's customers itself of the assignment and to collect the claims at any time.
5. The Buyer shall without delay inform the Seller in writing of any pledges or other interventions through third parties. The ensuing intervention costs will in any case be charged to the Buyer, unless they are borne by third parties.
6. Treating and processing of the goods delivered by the Seller subject to retention of title shall always be carried out by the Buyer on behalf of the Seller without the Seller incurring any liabilities therefrom. Corresponding to the proportion of the net invoice value of the Seller's goods to the net invoice value of the treated or processed goods, the Seller shall become co-owner of the item created thereby which, as goods subject to retention of title, shall serve the purpose of securing all claims. When treating or processing, bonding or mixing with other goods not owned by the Seller is carried out by the Buyer, the provisions of §§ 947, 948 of the German Civil Code [Bürgerliches Gesetzbuch (BGB)] are applicable with the effect that the co-owner's share in the new item is now considered to be goods subject to retention of title as defined by this stipulation. If the goods subject to retention of title are subsequently to treating or processing, bonding or mixing according to the aforementioned paragraphs resold by the Buyer together with other goods not owned by the Seller, then the assignment of the purchase price claim shall be limited to the amount of the invoice value of the goods subject to retention of title.
7. The Seller is obligated to release the securities which it is entitled to at the Buyer's request insofar as the realizable value of the Seller's securities exceeds the Seller's claims against the Buyer, which are to be secured, by more than 10 %; the selection of the securities to be released is incumbent on the Seller.

## **§ 9 Damages**

1. The Seller shall be liable in accordance with statutory provisions insofar as the Buyer asserts claims for damages which are caused by intent or gross negligence on part of the legal representatives or executives of the Seller. The liability for damages shall be limited, however, to the foreseeable, typically occurring damages, except in case of intentional breach of contract.

2. In case of culpable violation of an essential contractual obligation, the Seller shall be liable in accordance with statutory provisions, provided that the liability for damages is limited to the foreseeable, typically occurring damages.

The Seller shall furthermore be liable according to the statutory provisions for fraudulent concealment of a defect as well as for any quality warranties given.

3. The liability for culpable injury to life, body or health shall remain unaffected; this shall also apply to mandatory liability according to the German Product Liability Act [Produkthaftungsgesetz]. If the Buyer sells the delivery items unaltered or subsequent to processing, blending or mixing with other goods, it shall internally hold the Seller harmless from and against any third-party product liability claims, insofar as it has caused the defect from which such liability arises.

4. Unless regulated otherwise in the aforementioned, liability shall be excluded.

5. The limitations on liability according to this Art. 9. shall also apply to a potential liability on the part of the legal representatives, executives and any other vicarious agent of the Seller vis-à-vis the Buyer.

## **§ 10 Industrial property rights**

1. If the Buyer stipulates through certain instructions, information, documentations, designs or drawings as to how the Seller is to manufacture and deliver the products to be delivered, then the Buyer shall guarantee that the Seller will not infringe upon third-party rights such as patents, utility models or any other industrial property rights and copyrights. The Buyer shall indemnify the Seller against all claims by third parties which these assert against the Seller because of such an infringement.

## **§ 11 Export regulations**

1. When reselling the Deliveries in foreign countries, the Buyer shall comply with the respective German, EU and U.S.-American export control regulations and shall upon request furnish adequate proof thereof to the Seller without delay.

## **§ 12 Place of performance – Venue – Applicable law – Other**

1. Place of performance and venue shall be Bad Kreuznach. The law of the Federal Republic of Germany shall apply exclusively. The application of the uniform laws of July 17, 1973, the Uniform Law on the International Sale of Goods (ULIS) [Einheitliches Gesetz über den internationalen Kauf beweglicher Sachen (EKG)] and the Uniform Law on the Formation of Contracts for the International Sale of Goods [Einheitliches Gesetz über den Abschluss von internationalen Kaufverträgen über bewegliche Sachen], shall be excluded.

2. Reference pursuant to § 33 of the German Federal Data Protection Act [Bundesdatenschutzgesetz]: Data shall be stored.

3. Should a provision of these General Terms and Conditions of Sale and Delivery be or become invalid or unenforceable, then this shall not affect their validity in other respects. The parties are obligated to replace the invalid or unenforceable provision on a proposal of the Seller with a provision that comes closest to its economic purpose.