

Standard Terms and Conditions (AGB) of WEDA Dammann & Westerkamp GmbH (1.7.2004)

I. Scope

1. The following Standard Terms and Conditions apply to all contracts for the supply of goods and services concluded between WEDA Dammann & Westerkamp GmbH (hereinafter the Supplier) and the Customer. They also apply to all future business relationships, even if they are not expressly agreed upon again. Contradictory terms of the Customer not expressly accepted by the Supplier will not be binding on the Supplier, even if it does not expressly reject them.
2. All agreements concluded between the Supplier and the Customer in connection with contracts of sale are contained in writing in the relevant contracts, these Terms and the Supplier's acknowledgement of order.
3. German law applies exclusively.

II. Offers, conclusion of contracts

1. The Supplier's offers are without obligation and not binding, unless it has expressly described them as binding in writing.
2. Details of dimensions and weights, illustrations, drawings and other documents belonging to the Supplier's non-binding offers remain the property of the Supplier, which reserves all copyright therein. Unless the Supplier has expressly described them as binding, they are only approximate.

III. Terms of payment

1. If the agreed delivery time is more than four months from the date when the contract was concluded, or if delivery is delayed until more than four months after the date when the contract was concluded due to circumstances for which the Customer alone is responsible or for which he alone bears the associated risk, the Supplier will be entitled to charge the price in force on the date of delivery. If the increase in price is by more than 5% of the contractually agreed purchase price, the Customer will be entitled to withdraw from the contract. This right to withdraw will lapse if the Customer fails to exercise it within a period of two weeks starting on the date when the new price is notified.
2. The Supplier's prices apply ex works unless otherwise agreed with the Customer. Packaging, installation, putting into service, insurance, customs duties, freight costs and VAT are not included in the price.
3. Unless otherwise agreed with the Customer in writing, the purchase price is due for payment net (without any deduction of discount etc.) immediately on receipt of the invoice by the Customer.
4. The Customer will be in default, even if no reminder is issued by the Supplier, if he fails to pay the purchase price within 30 days from the due date and receipt of an invoice or equivalent request for payment. If the Customer falls into arrears with a payment, the Supplier will be entitled to charge interest at 5% above the ECB's current base rate from the relevant date onward. The Supplier reserves the right to prove that a greater loss was suffered.
5. Even if a complaint or a counterclaim is made, the Customer will only be entitled to offset if the counterclaim concerned is legally final and binding, has been acknowledged by the Supplier or is undisputed. The Customer is only authorised to exercise a right to withhold if his counterclaim is based on the same contract of sale.

IV. Delivery times

1. Delivery dates and periods not expressly agreed to be binding are in all cases without binding force. If they are agreed to be binding they will begin to run on the receipt of our acknowledgement of order, but in no case before the clarification of all details of execution and the provision of any required certificates and documentation required by the Customer.
2. If the Supplier is culpably unable to adhere to an expressly agreed deadline or is in default for any other reason, the Customer must grant it a reasonable extension of deadline. This will begin to run on the day when the Supplier receives written notice of default. If this extended deadline passes without result, the Customer will be entitled to withdraw from the contract.
3. The Supplier will be liable as provided by law, subject to the following restrictions, if the contract is one in which time is of the essence or if as a result of a delay in delivery for which the Supplier is responsible the Customer is entitled to claim that he no longer has any interest in the fulfilment of the contract.
4. The Supplier will be liable to the Customer as provided by law if delivery is delayed due to a deliberate or grossly negligent breach of duty for which the Supplier is responsible. Culpability on the part of its representatives or vicarious assistants will be attributed to the Supplier. If a delay in delivery is not the result of a deliberate or grossly negligent breach of duty for which the Supplier is responsible, the Supplier's liability will be limited to foreseeable losses typical of the type of contract concerned. This liability is limited to the invoice value of the goods/services concerned.
5. If a delay in delivery for which the Supplier is responsible is the result of a culpable breach of a substantial contractual obligation, the Supplier shall be liable as provided by law, its liability being limited to foreseeable losses typical of the type of contract concerned.
6. This does not affect other statutory claims or rights of the Customer based on a delay in delivery by the Supplier.
7. The Supplier is entitled to make part deliveries of goods and/or services at any time, as long as it is reasonable to expect the Customer to accept this.

V. Passing of risk - transport/packaging

1. Loading and transport will be uninsured, at the Customer's risk and at the discretion of the Supplier. The Supplier will try to take into account the Customer's desires and interests with respect to transport methods and routes; any additional costs incurred as a result - including in cases in which carriage-paid delivery is agreed - will be charged to the Customer.
2. If dispatch is delayed at the request or through the fault of the Customer, the Supplier will store the goods at the expense and risk of the Customer. In such a case notification of readiness for dispatch is equivalent to dispatch.

3. Delivery "free to truck unloading bay" is conditional on the bay concerned being accessible via a route which is easily usable by a truck. The recipient is responsible for ensuring immediate and technically appropriate unloading - if necessary including the provision of suitable unloading equipment, e.g. forklift trucks etc. Waiting times will be charged.
4. Even in the case of delivery free to destination, the risk will pass to the Customer on the handover of the goods to a forwarding agent or carrier and at the latest on its departure from our plant.

VI. Installation

1. Installation will only be carried out by the Supplier if this has been agreed separately by an independent contract.
2. In such cases charging will be on the basis of the Supplier's hourly labour rates, mileage and travel allowance rates previously agreed or applicable at the time when the service is provided, with both the time taken for and the kilometres involved in the journeys to and from the site also being chargeable. Travel expenses incurred for the use of means of transport other than the motor vehicle (e.g. train, ferry, taxi, plane etc.) will be passed on to the Customer at cost.
3. If a flat-rate price is agreed for installation and if setting up or putting into service is delayed through no fault of the Supplier, all of the associated costs for waiting time, travel and other expenses incurred by installation staff will be charged to the Customer. If once installation work has been completed it is impossible for the system to be put into service and handed over immediately for reasons for which the Customer is responsible, any subsequent additional work by installation staff must be paid for by the Customer in addition.
4. Installation work ordered from the Supplier does not include earth work, chiselling, brick-laying, roofing, painting or electrical work.
5. The Customer must confirm the time worked and the work done by the installation staff on the forms supplied to it on completion of the work or weekly in the case of longer installation jobs. Any disagreements or discrepancies must be noted. Travel and waiting time will count as time worked. The absence of a signature does not exclude the possibility of our work being charged on the basis of the information supplied by our installation staff.
6. The appropriate support staff and equipment, for example lifting, scaffolding and transport equipment, required for all installation work must be provided to our installation staff free of charge. Suitable support staff must be deployed to our installer's instructions. Unless otherwise agreed in writing, the Customer must under exceptional conditions bear the cost of using a mobile crane.
7. Sufficiently large, dry and lockable rooms must be made available for the storage of system components, materials and tools and for the accommodation of our installation staff. The Customer bears the risk of loss of system components on the construction site.
8. The Customer is under an obligation to check the current construction status before our installers leave the site. The Customer must report any damage, of whatever kind, for which we are to be held responsible, before our installers leave the site. We will not be held responsible for damage reported retrospectively.
9. If modifications are required either by public authorities or by the Customer, the Customer must pay for the materials and work involved; we will issue a separate invoice for these.
10. It must be possible to drive the installation equipment across the floor of the premises concerned; the construction site must also be accessible for both passenger cars and delivery vehicles and, if relevant, for lifting gear. If additional costs are incurred here due to deficiencies, these will be charged separately to the Customer.

VII. Claims for defects

a) Material defects

1. The Customer must check goods received for completeness, transport damage, obvious defects, characteristics and qualities. The Customer must submit a written complaint about obvious defects to the Supplier immediately, at the latest within one week of the delivery or installation of the contract item concerned. Valid complaints cannot be made to representatives of the Supplier, but only to the latter itself. Complaints about defects which are not obvious must be submitted in writing immediately on discovery, at the latest within 6 weeks of the receipt of the goods. The goods must be kept unchanged, in the condition in which they were at the time when the defect was discovered, for inspection by the Supplier. The Customer is under an obligation to supply samples of the material which is the subject of a complaint immediately if requested to do so by the Supplier. If damage occurs during transport by rail, by ship or by a road haulage contractor, the consignment must be made available to the carrier and/or the relevant forwarding department. Breakages and quantities missing from consignments must be noted on the bill of lading/consignment note. A breach of any of these obligations will exclude any liability on the part of the Supplier. The same applies if a complaint about a defect is not submitted until after combination with other goods or processing.
2. The Supplier will have no obligation under warranty if the Customer fails to complain in writing about an obvious defect at the proper time. If the Supplier is responsible for a defect in goods and the Customer complains about this in writing at the proper time, the Supplier will be under an obligation to remedy (the Customer's right to withdraw from the contract or reduce the purchase price being excluded here), unless statutory rules permit the Supplier to refuse to remedy. The Customer must allow the Supplier a reasonable period to remedy each individual defect.

(Continued on Page 2)

(Continued from Page 1)

3. The Supplier may choose to remedy either by rectifying the defect or by supplying new goods. In the case of claims based on defects in the execution of contracts for work and services (which guarantee a particular result) or contracts for work and materials (contracts for work and services in which the contractor supplies the material with which the work is to be done) the Supplier will rectify the defect by repairing it. The Customer is entitled to reduce the purchase price as permitted by statutory rules or to withdraw from the contract if the Supplier refuses to remedy or remedy has been unsuccessful. This does not affect the Customer's right to enforce more far-reaching claims to damages subject to the following provisions. The Customer may not reduce the purchase price or withdraw from the contract during the process of remedy. A remedy will be regarded as unsuccessful following the second failed attempt.
4. Liability on the part of the Supplier is excluded if the cause of a defect is that an item supplied was used by the Customer or a third party in an unsuitable or inappropriate way, e.g. by overuse, the exceeding of normal usage periods or incorrect installation or putting into service. The same applies to defects which result from normal wear and tear, errors or negligence in the handling or maintenance of an item supplied or from the use of unsuitable operating materials (animal feed, lubricants etc.). Parts subject to wear and tear include in particular pumps, valves, stirring devices, mobile pipeline separators and moving elements (friction) and surface coatings (e.g. painted or galvanised surfaces) due to the effects of wear and tear or corrosion.

b) Legal defects

1. If the use of an item supplied results in a breach of industrial property rights or copyright in Germany, the Supplier will at its own expense obtain the right for the Customer to continue using it or modify the item supplied in a way which it is reasonable to expect the Customer to accept so that the protected right concerned is no longer breached. If it is impossible to do this either economically or within a reasonable period, the Customer will be entitled to withdraw from the contract. Under these circumstances the Supplier will also be entitled to withdraw from the contract. The Supplier will also indemnify the Customer against undisputed or legally final and binding claims of the owner of the protected rights concerned.
2. Subject to the provisions of Section VIII, the statement of the Supplier's obligations in the event of a breach of industrial property rights or copyright contained in Section VII. b) is complete and exhaustive. They will only apply if
 - the Customer informs the Supplier immediately of any claims based on breaches of industrial property rights or copyright,
 - the Customer provides the Supplier with the appropriate amount of support in defending the claims made and/or makes it possible for the Supplier to carry out the modifications mentioned in Section VII. b),
 - the right to take all defence measures, including settlements out of court, is reserved for the Supplier,
 - the legal defect is not the result of any instruction given by the Customer and
 - the breach of rights was not caused by the Customer modifying an item supplied without authorisation or using it in a way which was not in conformity with contract.

VIII. Liability

1. Without prejudice to the provisions of IV. 2 - 6 of these Terms and the following limitations of liability, the Supplier is liable without restriction for injury to life, limb or health caused by a negligent or deliberate breach committed by it, by its legal representatives or by its vicarious assistants, for loss or damage covered by the German Product Liability Act (Produkthaftungsgesetz) and for all loss or damage caused by deliberate or grossly negligent breaches of contract or fraudulent or malicious actions of the Supplier, its legal representatives or its vicarious assistants. Liability to merchants as defined by German law for gross negligence is excluded. If the Supplier has provided a written guarantee of characteristics and/or durability for goods or parts thereof, it will also be liable under that guarantee. The Supplier will, however, only be liable for damage resulting from the absence of promised characteristics or durability, but not directly suffered to the goods, if it is apparent that the risk of such damage is covered by the characteristics and/or durability guarantee.
2. The Supplier is also liable for loss or damage caused by simple negligence if this negligence relates to a breach of contractual obligations whose fulfilment is of particular importance for the achievement of the contract's purpose (cardinal obligations). The Supplier is, however, only liable to the extent that the loss or damage is typical for the type of contract concerned and foreseeable. Otherwise the Supplier is not liable for breaches of subsidiary obligations not essential to the contract which are caused by simple negligence.
3. Any more far-reaching liability, whatever the legal nature of the claim concerned, is hereby excluded. If the Supplier's liability is excluded or restricted, the same applies to the personal liability of its employees, representatives and vicarious assistants.
4. The limitations of liability contained in Sentences 1 - 3 above also apply to liability for the Supplier's representatives, executive staff and other vicarious assistants.

IX. Reservation of title

1. The Supplier reserves title to the goods (reserved goods) until all payments due under the contract of sale have been received.
2. The Customer must notify the Supplier in writing immediately of any intervention by third parties, in particular including any execution or other action negatively affecting its property. The Customer must reimburse the Supplier for all losses suffered and costs incurred as a result of a breach of this obligation and for any intervention necessary to counter third-party action affecting goods.

3. If the Customer fails to meet its payment obligations in spite of a reminder issued by the Supplier, the Supplier may require the handover without notice of reserved goods to which it still holds title. The Customer must bear the associated transport costs. Seizure of reserved goods by the Supplier will always represent withdrawal from the contract. The Supplier is entitled to sell reserved goods returned to it. Following the deduction of reasonable costs of sale, the proceeds of sale must be offset against the Customer's liabilities.

X. Use of software / liability

1. If software is supplied, the Customer is granted a non-exclusive right to use that software and its documentation. It is supplied for use together with the relevant item supplied. The use of the software on more than one system is prohibited.
2. The Customer is not permitted to duplicate, revise or translate software. The Customer undertakes not to remove manufacturer information, in particular including copyright notices, or to amend these without the Supplier's express prior approval.
3. All other rights in the software and the associated documentation, including any copies, remain the property of the Supplier. The granting of sublicences is not permitted.
4. Unless otherwise provided below, any claims by the Customer, whatever their legal basis, are hereby excluded unless loss or damage was caused deliberately or by gross negligence. Liability for gross negligence to merchants as defined by German law is also excluded. The Supplier is therefore not liable for damage not suffered to the goods themselves, e.g. loss of profit, savings not achieved or other financial losses suffered by the Customer. If the Supplier's liability is excluded or restricted, the same applies to the personal liability of its employees, representatives and vicarious assistants.
5. The Supplier points out that current technology does not enable the possibility of software malfunction to be excluded under all conditions of use and in all combinations. What is supplied is therefore only an item of software which is in principle suitable for use in accordance with the relevant product description and instructions for use and by the use of which the system supplied can perform its main functions. Otherwise no warranty is provided that the software and its data structures are free of defects. However, if the software or the hardware in which it is installed is defective, the Customer may within the warranty period of one year from initial delivery require the Supplier at the latter's discretion either to supply a replacement and/or to remedy the defect. For this purpose the Customer must return the hardware supplied to him, any data carriers belonging to this and any backup copies. The Customer must himself take suitable steps to ensure that damage does not occur or to limit any damage. The Customer himself is responsible for the method and extent of data backup and hereby indemnifies the Supplier against liability for any loss of data.

XI. Service

1. The Supplier will make arrangements to enable it to assist the Customer in the event of technical problems. One measure which is essential here is to maintain a level of technical know-how which the Customer can benefit from by telephone, by modem, via the Internet or by means of services provided by technical staff or customer advisers.
2. The Supplier is entitled to invoice the Customer for the costs incurred as a result of each use of such services and service facilities.

XII. Warranty period

Unless otherwise provided in these terms, all claims against the Supplier will expire by limitation one year after initial delivery. This does not apply to claims for which a longer period of limitation is mandatorily prescribed by law. The warranty period for the Supplier's products and services is 1 year.

XIII. Place of performance, legal venue

1. The place of performance for our supplies and services is our plant in Lutten (Oldenburg), Germany.
2. To the extent legally permissible, the legal venue is Lutten (Oldenburg), Germany.

XIV. Concluding terms, applicable law

1. The relationship between the contracting parties is governed exclusively by the laws of the Federal Republic of Germany. The application of the Uniform Law on the International Sale of Goods and the Uniform Law on the Formation of Contracts for the International Sale of Goods is hereby excluded.
2. The Customer is not entitled to assign claims arising out of the contract of sale without the consent of the Supplier.
3. Should any of these Standard Terms and Conditions be or become invalid or unviable, this shall not affect the validity of the remainder of the Standard Terms and Conditions.