

General Terms and Conditions of Business of Witeg Labortechnik GmbH

Version 01.01.2017

1. General

1.1 The following provisions apply to all initial, ongoing and future business relationships between us and our clients who are contractors/traders within the meaning of § 14 of the German Civil Code (Bürgerliches Gesetzbuch). Our Terms and Conditions of Supply, Performance and Payment apply exclusively and our customers declare that they are in agreement with such conditions by placing orders with us; this applies equally for future transactions even if reference is not expressly made to them but has been sent to the customer in connection with an order which we have acknowledged. If the order is placed at variance with our Terms and Conditions of Supply, Performance and Payment, our Terms and Conditions of Supply, Performance and Payment apply even if we do not object to such alternative conditions. Terms and Conditions which are at variance with our standard Terms and Conditions of Supply, Performance and Payment apply only if we have expressly acknowledged such alternative conditions in writing. Amendments of and additions to these Terms and Conditions of Business must be made in writing. The customer can only invoke collateral agreements prior to and at the conclusion of the contract if such agreements are confirmed in writing without delay. These provisions do not apply if our customer is a consumer within the meaning of § 13 of the German Civil Code.

1.2 The customer's General Terms and Conditions of Business are excluded unless we have expressly recognised them.

1.3 Our offers are subject to final confirmation; we reserve the right to make technical improvements to our products. We may store data which is important for the administration of the contract on data processing equipment.

1.4 Supply contracts and all other agreements (including collateral agreements) as well as statements made by our representatives are only binding in law on us if confirmed in writing. Business correspondence printed on data processing equipment (e.g. order confirmations, invoices, credit notes, extracts from accounts, payment reminders) is binding in law without a signature.

1.5 We draw our customers' attention to the fact that we process and transmit their personal data (exclusively for business purposes) with the aid of electronic data processing equipment in accordance with the requirements of the German Federal Data Protection Act (Bundesdatenschutzgesetz).

2. Agreement on prices

2.1 Our prices exclude any Value Added Tax which may be imposed by law and are ex works. In the case of orders for which no prices are agreed, our prices valid on the day of delivery apply and are expressed in Euros (EUR) unless indicated otherwise.

2.2 If changes to the price basis should occur up to the day of delivery, we reserve the right to amend our prices accordingly. However, this only applies to delivery periods longer than 4 months and to price changes not exceeding 10 %. If the price change is greater, a new price agreement must be concluded. If such an agreement should not be concluded, we have the right to withdraw from the contract in writing within 14 days.

2.3 Confirmed prices only apply if the quantities in the confirmation are taken by the customer.

2.4 Packing, transport, freight and insurance costs are for the customer's account. A minimum quantity surcharge of €15.00 will be invoiced on orders with a value of less than € 100.00.

3. Payment

3.1 The purchase price and/or agreed compensation for work including all costs are due for payment without deductions on receipt of invoice. Our invoices must be paid within 30 days without deduction. Payments are not deemed to have been received until the day on which we have access to the funds.

3.2 Payments must be made including VAT and without deduction of any prompt payment discounts or other deductions unless any other terms of payment are expressly agreed in writing.

3.3 Bills of exchange are only accepted by express agreement and – also in the case of cheques – only as an undertaking to pay and subject to our acceptance of them on a case by case basis. Discounting and other fees must be borne by the customer and are due for payment immediately.

3.4 All payments are credited first to interest and costs and thereafter to our oldest receivables, irrespective of the customer's directions.

3.5 If payments are late, we will invoice interest on such late payments at the level allowed by law. The assertion of additional claims for compensation is not excluded.

3.6 If payment should be late, cheques and bills of exchange dishonoured, payments suspended, the filing of proceedings for the arrangements of debt, failure to abide by the terms of payment or if circumstances should exist likely to reduce the client's credit-worthiness, all our receivables – including in the event of a payment moratorium – are due for immediate payment. We are also entitled to perform services and make deliveries which are still outstanding only against the payment of cash in advance or to withdraw from the contract after setting a reasonable grace period and to require compensation in lieu of performance.

3.7 Claims arising from the contractual relationship may only be assigned by the customer with our express consent. Off-setting or retention are only permitted in respect of uncontested counter-claims or counter-claims which have been judged to be final and absolute. We are entitled to refuse the exercise of the right of retention in the form of the provision of a bond or a surety (Bürgschaft).

4. Retention of title

4.1 All our deliveries are made with retention of title (goods subject to retention of title). Title does not pass to the customer until he has paid all his liabilities owed to us (including those arising from incidental claims) arising from our supplies and services. If we are trading with the customer on open account, the goods subject to retention of title are deemed to be collateral for our account balance including when payment is made against liabilities which have been specifically designated.

4.2 If goods we have supplied should be mixed with or connected to other objects, the customer will assign to us (joint) title on the item arising therefrom in the ratio of the value of our goods subject to retention of title to the invoice value of the other goods used. If the customer should prejudice our rights set out above, he is obliged to pay us compensation. Dismantling and other costs are for the customer's account.

4.3 The customer may only sell the goods we delivered in the normal course of business and in such a case may only sell or use them (e.g. as part of a contract for work and services or a contract for work done and materials supplied) if his customer has not excluded the assignment of the receivable arising from the resale or re-use of the goods. The customer is obliged to ensure that his customer issues any retention of the right to consent to the assignment to us in the required form. The customer is not allowed to pledge by way of security or hypothecate the goods to which title is reserved.

4.4 The customer must inform us immediately of any attachment, even if such attachment is imminent or any other prejudice to our right of ownership by third parties; the customer must confirm our right of ownership in writing to third parties and to us. In the case of attachments, a copy of the return of execution must be sent to us.

4.5 If the customer should default on payment, we are entitled to demand return of the goods subject to retention of title and to procure direct possession of such goods for us or via authorised persons, irrespective of where the goods are located. The customer is obliged to return to us the goods to which title is reserved and is also obliged to provide us with the information necessary for us to assert our rights and to surrender documents for this purpose. The request for the return of the goods is not deemed to be withdrawal from the contract.

4.6. In order to act as collateral for all our claims (including future claims) arising from the business relationship, the customer hereby assigns to us all the receivables (including those on open account) with all ancillary rights which arise to him from the resale and other use of the goods subject to retention of title (e.g. combination, processing, installation in a building).

4.7 If the sale or other use of our goods subject to the retention of title – in whatever state – should be made in conjunction with the sale or other use of objects to which third party rights are attached and/or in conjunction with the performance of services by third parties, the assignment of future claims is limited to the invoiced value of our invoices.

4.8 The customer is entitled to collect receivables which have been assigned to us. In the event of payment default, suspension of payments, the application for or opening of insolvency or out of court composition proceedings or other deterioration of the customer's assets, we may revoke this authorization to collect receivables. If so required, the customer must inform us of the receivables which have been assigned and of the parties owing such receivables, and provide us with all information necessary for the collection of these receivables, to surrender to us the associated documents and to inform the debtor of the assignment. We are also entitled to inform the customer's debtors of the assignment and to require the debtors to pay us.

4.9 If the realisable value of the collateral to which we are entitled in accordance with the above provisions should exceed the value of our receivables by more than 10 %, we are obliged to release the excess collateral at our option if so required by the customer.

5. Supplies and services

5.1 Partial deliveries are permitted to a reasonable extent. We may invoice partial payments to a reasonable degree. We reserve the right to correct orders so that they comply with packaging units. The order is deemed to have been completed if plus or minus 10% of the quantity is delivered.

5.2 The delivery route, delivery method, packaging and other protection for deliveries are at our option. Transport risks are borne by the customer in all cases. We are entitled, but not obliged, to insure deliveries in the name and for the account of the customer.

5.3 The customer must arrange for any damage and/or loss to be recorded in writing by the carrier immediately on receipt of the goods and claims asserted.

5.4 All delivery dates are ex works

6. Transfer of risk and place of performance

6.1 We bear the risk up to the time when the goods are handed over to the mail service or to the carrier or the company charged with organizing the transportation.

6.2 The customer also bears the risk before hand-over if he delays the hand-over.

6.3 The place of performance for delivery is our Factory Number 2 in Wertheim. The place of performance for payment is our registered office in Factory Number 1.

7. Time limits

7.1 If the customer should be in breach of his obligations of cooperation (e.g. by failure to call off the goods in good time and refusal to accept them), we are entitled, at the end of a grace period which has elapsed without performance being made, to take the necessary steps ourselves and deliver the goods or to withdraw from that part of the supply contract where performance has not yet been made. Our right to require compensation for breach of duty and compensation in lieu of performance is unaffected hereby. In the case of call-off orders, the customer must take the whole quantity within 12 months.

7.2. In the case of goods which we supply but do not manufacture ourselves, supply is subject to timely and correct deliveries to ourselves unless we are responsible for the late, incorrect or short delivery.

7.3 Force majeure events extend the delivery time commensurably and entitle us to withdraw from the contract in whole or in part. Strikes, lock-outs, disruption of operations or other unanticipated circumstances for which we are not responsible and which materially impede delivery or render delivery impossible are of equal ranking with force majeure. This also applies if the above-mentioned circumstances occur during a delivery delay or at a supplier.

7.4 If a time period or an agreed date is exceeded, the customer has the right to require us to state within two weeks whether we are withdrawing from the contract or wish to deliver within a reasonable grace period. If we fail to provide a statement, the customer may withdraw from the contract in so far as performance is without interest for him.

8. Liability for defects

8.1 The goods supplied are free from material defects if they comply with the product description or, in so far as no product description is available, comply with the relevant state of the art. We reserve the right to make changes in design and/or workmanship which do not prejudice the fitness for use or value of the goods which are to be supplied; such changes do not justify a complaint for defects. If defects do not prejudice the fitness for use or the value of the goods which are supplied or only prejudice such fitness and value to an immaterial extent, there are no grounds for claims due to defects.

8.2 Guarantees relating to the character and durability of the goods which are supplied are only deemed to be accepted to the extent that we have expressly recognised the guarantee in writing as such.

Guarantees which our suppliers have made in written guarantees, in relevant publicity or in other product documentation, are not made by us. The obligate only the supplier who made this acceptance of a guarantee.

8.3 Defects must be notified without delay and are excluded if they are not received by us within 2 weeks of the receipt of the delivery. Defects which cannot be ascertained within this period even after the most careful examination must be reported to us without delay and not later than 2 weeks after discovery.

We are not responsible for damage to deliveries caused by the breakage of glass during transportation caused after the transfer of risk. Breakages with a value of up to and including € 20.00 will not be replaced.

8.4 If the goods which were delivered should exhibit defects or if they fail to comply with a warranted property, we will, at our option, either rectify the defect free of charge within a reasonable period by means of a repair or replace the goods by defect-free goods (subsequent performance). The customer must allow us, or a person authorised by us, the time and opportunity for such actions. If this does not occur or if modifications or repairs are undertaken to the object which is the subject of the complaint, we are released from liability for the defect.

8.5. If subsequent performance should fail or if subsequent performance is not made within a reasonable grace period imposed on us by the customer, the customer may require a reduction in the price or withdraw from the contract. The purchaser cannot require reimbursement for his expenses incurred to no effect.

8.6 Claims by the customer for expenditure necessary for the purpose of subsequent performance (Clause 8.4) or reversal after withdrawal from the contract (Clause 8.5), especially transportation, shipping and handling, labour and material costs are excluded in so far as the expenditure arose because the goods were installed in a location difficult to access. The same applies mutatis mutandis if the goods which were delivered were installed in a location outside the Federal Republic of Germany.

8.7 Damage which occurs through incorrect or defective installation, commissioning, handling, operation or maintenance or through the use of unsuitable apparatus or apparatus other than the specified apparatus do not give rise to any grounds for claims for defects.

8.8 The time limits specified by law for the assertion of claims for defects apply. The time period commences on the day of our delivery.

In the event of the loss of life, bodily injury or impairment of health and in the case of intentional or gross neglect of duty on our part and in the event of fraudulent concealment of a defect or if properties have been warranted, the normal statutory prescription periods apply.

8.9. For the remainder, Clause 10 applies for claims for compensation. Additional claims by customers for defects are excluded.

9. Spare parts / maintenance / repairs / calibration

The supply of spare parts is limited to the period of 5 years after completion of delivery. Repairs will be undertaken up to the value of € 50.00 without an estimate.

10. Compensation

10.1 We accept liability for compensation and reimbursement of expenditure incurred to no effect (§ 284 of the German Civil Code) for reason of breach of contractual or non-contractual obligations (e.g. for reason of default or tortious acts) only in the case of intent or gross negligence; in the case of culpable loss of life, bodily injury, fraudulent concealment of a defect or acceptance of a warranty as to properties or under the German Product Liability Act (Produkthaftungsgesetz) we only accept liability for personal loss or for damage to property in the case of objects used for private purposes.

10.2 In addition we accept liability for breach of material contractual obligations also in the event of ordinary negligence. However, in this case our liability is limited to damage which could have been reasonably foreseen at the time of the conclusion of the contract and which is typical under the contract.

10.3 In the case of loss caused by delay and in the event of ordinary negligence, we only accept liability amounting to 5% of the purchase price agreed with us.

10.4 The purchaser must inform us without delay and in writing of any imminent consequences of default.

10.5 No change in the burden of proof to the disadvantage of the customer is associated with the above provisions.

11. Packaging material

We will only accept return of packaging material in so far as we are obligated to do so under the German Packaging Regulations (Verpackungsverordnung) or other statutory requirements.

12. Intellectual property rights, confidentiality

12.1 We retain ownership and all intellectual property rights and copyrights of our designs, samples, drawings, technical documentation, cost estimates even if the customer has accepted the costs thereof. The customer may only use the designs etc in a manner agreed with us. He may not manufacture the goods without our written consent or cause the goods to be manufactured by a third party.

Pictures, drawings, sketches, dimensions and weights are only approximate and provisionally definitive in so far as they have not been confirmed as binding. .

12.2 In so far as we supply goods in accordance with designs specified by the customer, the customer warrants to us that intellectual property rights and other third party rights are not breached by their manufacture and supply. He must compensate us for all losses resulting from such infringements.

12.3 The customer must maintain confidentiality vis-à-vis third parties in respect of all information not in the public domain which was obtained as a result of this business relationship.

12.4 Documents, drawings and pictures we supplied must not be made available to third parties or reproduced or used for any purpose outside this contract.

13. Provision in respect of electronic business transactions

If we use a tele or media service within the meaning of § 312e of the German Civil Code for the purpose of the conclusion of a contract for the supply of goods or the performance of services, the customer waives the provision and demonstration of a system which he can use to recognise and correct entry errors before he sends his order. .

14. Final provisions

14.1 The place of jurisdiction is Wertheim in so far as the client is a merchant. However, we are at liberty to take legal action before the court competent for the customer's registered office.

14.2 If a provision in these General Terms and Conditions of Business or in other agreements between the customer and ourselves should be or become invalid, the validity of all other provisions or agreements is unaffected thereby. If a provision of these contractual terms and conditions is invalid, after taking into account the other provisions this provision is to be replaced by a valid provision which comes closest to the economic purpose of the invalid provision.

14.3 This contract is governed exclusively by the law of the Federal Republic of Germany. International law, including international conventions on the cross-border sale of goods, is excluded.

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