

TERMS AND CONDITIONS OF DELIVERY

Wöhrl Stromversorgungssysteme GmbH

(Status as at 03/2020)

1. Scope of validity, Defense Clause, Written Form

- 1.1. These terms and conditions only apply to businesses defined by § 14 of German Civil Code (§ 14 BGB), legal entities under public law or public special fund under public law. All deliveries and services supplied by us, now and in future, shall be subject exclusively to these terms and conditions. Additional terms and conditions of the customer, or conditions deviating from these, shall not be binding on us, even if we do not decline to accept them in the individual case, except in cases where we have given express acknowledgement to the contrary. In the latter case they shall only apply to the individual contract in question.
- 1.2. Unless otherwise stipulated the agreed written form is also complied with by fax or email.
- 1.3. Notes referring to the applicability of statutory prescriptions are significant only as clarification. Thus, even without clarification of this nature the relevant statutory prescriptions shall apply, in so far as they be not directly modified or explicitly excluded by these terms and conditions.

2. Conclusion of the contract

- 2.1. Our offers are at all times non-obligatory, unless explicitly designated as being binding. The customer shall be bound by his order for two weeks from reception of the order.
- 2.2. Orders (as well as modifications of an order) will only be accepted by us when we have given written confirmation to this effect. The receipt of a note of delivery or invoice by the customer, or the performance of the delivery or services in question, shall be regarded as constituting confirmation. If the customer has objections against the content of a confirmation, he must register his objection immediately, at latest within 3 working days. Otherwise the content of the confirmation shall be regarded as having been accepted. The contract becomes effective at the latest by receipt of the delivery in accordance with our confirmation.



- 2.3. It is the customer's obligation to check the order on his own responsibility, together with all related contractual documentation, for completeness, correctness and suitability for the purpose of use envisaged by himself.
- 2.4. Conclusion of the contract shall be subject to the reservation that punctual delivery to ourselves shall have been affected. This shall not however apply if we are responsible for the non-delivery, in particular if we have failed to conclude an appropriate hedging transaction. In such a case we will inform the customer promptly of the non-availability of the goods, and reimburse him immediately for any counter performance already effected.
- 2.5. In the case of call orders, we agree with the customer a delivery quantity which the customer will call up within the agreed time frame. The calls must reach us at latest six weeks before the start of the given delivery month.

3. Prices, terms and conditions of payment

- 3.1. Our prices shall be based on the listed price valid on the day of the conclusion of the contract, with the addition of statutory VAT, and are to be understood as not including packaging and carriage charges ex works. Incidental costs will be charged for based on the documentation submitted.
- 3.2. In so far as the prices are based on our listed prices, we shall be entitled to increase the price if the delivery only takes place more than four months after the conclusion of the contract or cannot be carried out for reasons for which the customer may be held responsible. We shall also be entitled to increase the price if our own costs, in particular material prices, collectively agreed wages, statutory and collectively agreed social insurance contributions and freight costs increase and if the delivery only takes place more than one month after the conclusion of the contract or cannot be carried out for reasons for which the customer may be held responsible.
- 3.3. If we have taken responsibility for the setup or assembly and nothing to the contrary has been expressly agreed, the customer shall be responsible (in addition to the agreed remuneration) for all necessary incidental costs such as travel expenses and transport costs and the cost of releases.



- 3.4. Our claims fall due for payment immediately and payable within 30 days of invoice date without deduction in EURO. We only grant discount after special agreement. In the event of default of payment, the legal regulations will apply.
- 3.5. We reserve the right to accept bills of exchange and cheques. Acceptance of these will in all cases only be in lieu of payment, taking into account all costs and expenses and without any guarantee in respect of timely presentation or protesting of such means of payment.
- 3.6. In case a customer is in default with a payment for more than two weeks, has suspended all payments or if there are indications after conclusion of the contract that our claims are at risk due to deficient ability of the customer, we may claim immediate payment of all claims from all existing contracts. For goods that have not been delivered, we can set a reasonable deadline for advance payment or security, after the unsuccessful expiry of the period, we can withdraw from the contract and demand compensation.
- 3.7. Notwithstanding contrary stipulations made by the customer, we shall be entitled to first of all credit the customer's payments against its older debts.
- 3.8. The customer shall only have offsetting rights if his counterclaim has been established at law or is uncontested. This ban on offsetting shall not apply to counterclaims on account of a defect based on the same contractual relationship as our claim. The customer shall only be entitled to exercise a right of retention to the extent that his counterclaim is based on the same contractual relationship.

4. Delivery

- 4.1. Specifications of deadlines and dates for delivery and performance are non-binding, except where in exceptional cases an express assurance of the delivery date or deadline has been provided.
- 4.2. Compliance with the agreed dates and deadlines always presupposes that all commercial and technical issues between the contractual partners have been resolved and the customer has fulfilled all his cooperation and assistance, including the agreed advance payment. If this is not the case, agreed deadlines shall be extended. We are only in default corresponding a written reminder after payment became overdue.



- 4.3. In the case of equipment which under the terms of the agreement has been made or modified in response to customer request and/or for the production of special customer products, adjustments and optimisations may be necessary in order to conform to the agreed specifications. Dates of delivery and/or acceptance approval may therefore be postponed by us for up to eight weeks without our being considered to be in delay.
- 4.4. We may not be held responsible in case of events of force majeure, as well as any other unforeseeable circumstances (in particular including disruptions to procurement, manufacture or delivery, strikes, lockouts etc., either on our own or on a supplier's premises), and shall be released from our obligation of delivery for the duration of the disruption, with the addition of an appropriate run-up time (even in case of an already existing delay). This shall apply likewise in so far as the authorisations of third parties requisite for the execution of deliveries have not been received by us in good time. In case of a fixed-date purchase, the customer shall be entitled to withdraw from the contract.
- 4.5. The customer shall ensure that for the implementation of all deliveries and services required cooperation and assistance are rendered completely, accurate, in time and in accordance with the state of art. If not otherwise agreed upon, the customer has to render his cooperation and assistance at their own expense and risk. If the customer culpably violates his duties of cooperation and assistance and this in a consequence leads to a delay of our delivery, we shall be entitled to insist upon compensation for the damages we suffer including any additional expenditures. The customer shall be liable for third parties primary for damages, that have been caused due to violation of his duties of cooperation and assistance.
- 4.6. The obligation to fulfill this contract is subject to the proviso that the fulfillment is not prevented by any impediments arising out of german, US and other applicable national, EU- or international regulations of foreign trade legislation or by any embargos or any other sanctions.
- 4.7. We supply equipment in all cases in state-of-the-art design. We shall not be under an obligation to supply equipment that is no longer part of our current product range (not even in a case of subsequent fulfilment).
- 4.8. The customer shall provide all information and documents necessary for export, transfer or import.
- 4.9. We shall be entitled to part deliveries, as far as those are reasonable for the customer. We are entitled to invoice these separately.



- 4.10. Our deliveries are made EX WORKS – EXW (Incoterms 2020), except where agreed to the contrary.
- 4.11. If consignment of the goods has been agreed, the risk of fortuitous loss or deterioration of the goods shall pass to the customer at the time of dispatch, at latest when the goods leave our factory or warehouse – this even in cases where we carry out the delivery, have assumed the costs of the consignment or are responsible for the setup and/or commissioning. The type of consignment, route and packaging shall be chosen by us at our discretion, when no written instructions have been provided by the customer. We will take out transport insurance cover only on being requested by the customer and in the name of the customer. The customer shall be obliged to register any evident transport damage promptly with the freight forwarder, making a note to this effect on the bill of consignment, freight forwarding order or delivery slip and getting it countersigned; the customer shall be obliged to make out a damage report to inform us immediately of the transport damage.
- 4.12. The customer shall inspect incoming goods immediately upon their receipt to any defects. Obvious defects must be notified at latest within 10 working days after delivery, on-obvious defects at latest within 5 working days after detection, notified at least in a written form. At mutual commercial business among businessmen, § 377 HGB (German commercial code) remains untouched.
- 4.13. If the dispatch of the consignment should be delayed in consequence of circumstances for which the customer may be held responsible, the risk shall pass to the customer from the day at which the goods are ready for dispatch. In this case we shall be entitled to store the goods at our discretion at the cost and risk of the customer, and to call for payment of the agreed price. To cover the costs, we may charge a flat 1.0% of the value of the invoice for each month or partial month; we reserve the right to demonstrate that higher costs have been incurred, and the customer has the right likewise to demonstrate lesser effective costs.
- 4.14. In accordance with the specifications of the Packaging Ordinance, transport packaging and any other packaging (with the exception of pallets) may not be returned to us but shall be disposed of by the customer at his own cost.



- 4.15. Our specifications relating to the object of the delivery or service (e.g. weight, dimensions, utility value, resistance to wear and tear, tolerances and technical specifications) and our presentation of the same (e.g. in the form of technical drawings and diagrams) are only approximately definitive, unless the practical utility of the object for the envisaged purpose of the contract be dependent on an exact agreement. These specifications are descriptions of the delivery or service, but do not constitute any guarantee of product properties. Deviations standard in the trade and deviations based on legal requirements or such as represent technical improvements, as well as the replacement of parts by components of equal value, shall be permissible in so far as the utility of the object for the envisaged purpose of the contract be not affected thereby.
- 4.16. In relation to standard software and firmware, the customer shall be granted only a simple and non-exclusive right of use on the agreed equipment. If the software of third parties be included within the scope of our delivery, the terms and conditions of the latter's licences shall accordingly apply likewise, and we will make these available to the customer on request if they have not already been supplied. In case of defects in the software of third parties clause 6.9 will apply.
- 4.17. If an explicit acceptance approval in respect of our deliveries has been agreed, this must be carried out immediately on the date for acceptance or after our communication of readiness for inspection and approval. Furthermore, the delivery shall be deemed to have been accepted within a week after hand-over of the performance or after communication of readiness for inspection and approval if the customer has not complained in writing of a substantial defect.

5. Retention of title, security rights

- 5.1. We reserve title to our goods (hereinafter referred to as 'goods subject to retained title') until the complete payment of all claims (including any future claims) resulting from the business relationship, also including any incidental claims. In case of ongoing payments, the retained title shall be seen as security for the claim in respect of the balance.
- 5.2. The customer shall be entitled in the course of his regular business operations to dispose of goods subject to retained title. The customer hereby assigns to us as of now all rights vested in him as a result of the disposal of the goods, including all incidental rights, and we hereby accept the assignment.



- 5.3. The reservation of title covers the products which are produced by processing, mixing or combination of our goods at their full value, whereby we shall be regarded as the manufacturer. If during the processing, mixing or combination with items of third parties their property right should persist, we shall acquire co-ownership in such processed, mixed or combined goods in proportion to the invoiced value. Incidentally the same shall apply to the produced product as to the goods delivered under reservation of title.
- 5.4. The customer may not pledge goods subject to retained title or assign them as collateral. We are to be notified in writing by the customer of any attempts by third parties to access goods subject to retained title, especially in the way of distraint or seizure. The customer shall be obliged to contest such attempts immediately, drawing the attention of the parties to our rights in the matter.
- 5.5. In the case of late payments, we reserve the right to withdraw from the contract and demand the immediate return of the goods.
- 5.6. We hereby undertake to release the goods subject to retained title, and assigned claims, to the extent that the realisable value of the collateral security provided shall exceed 110% of the secured claim. The release shall be effected by means of transfer of title or reassignment of the claims in question.
- 5.7. The costs of the return and exploitation of the goods subject to retained title shall be borne by the customer. The costs shall amount to a flat 5% of the exploitation proceeds including VAT, unless we should demonstrate higher or the customer lower effective costs or no costs.

6. Claims in case of defects

- 6.1. The goods are free from defects when they conform to the agreed properties, based on our product description and the written order confirmation. Public announcements, advertisements and publicity relating to the goods emanating from us, the manufacturer or vicarious agents are without relevance to the product properties.
- 6.2. We are only obliged to carry out delivery within Germany without violation of the commercial intellectual property rights and copyright rights of third parties (collectively referred to below as 'intellectual property rights'). Claims by the customer are hereby excluded when the violation of intellectual property rights has been occasioned by special requirements of the customer, by use of the goods for purposes not originally envisaged by us or as a result of the



fact that the goods have been modified by the customer or used in connection with products not supplied by us.

- 6.3. The customer shall give us the opportunity of investigating claims relating to defects (including those where third parties are involved). If the complaint of a defect should prove ungrounded, the customer shall be obliged to reimburse us for the costs of the associated investigation.
- 6.4. In case of defects, we will have the discretionary choice between rectifying the defect or delivering new goods (subsequent fulfilment). In case subsequent fulfilment should prove inadequate, involve unreasonable demands on the customer or be declined by the latter, the customer may reduce the price or – in the case of not insignificant defects – withdraw from the contract or call for indemnification in accordance with section 7 below.
- 6.5. Expenses in connection with subsequent fulfilment resulting from the fact that the sold goods have been conveyed to a different place from the agreed place of fulfilment will be assumed by ourselves only when a written agreement to this effect has been entered into.
- 6.6. If the customer has installed the goods in another thing or attached it to another thing, we shall not be obliged as a part of our supplementary performance, to reimburse the customer's costs for the removal of the defective parts and the installation and mounting of the repaired or delivered defect-free goods. Other claims of the customer shall not be affected.
- 6.7. The customer shall not be entitled to assign claims relating to defects to third parties.
- 6.8. Customer's claims for recourse against us according to § 478 BGB (German Civil Code) and § 445a BGB (German Civil Code) only apply in that the customer hasn't made any specific agreement with its customer that goes beyond legal liability for defects.
- 6.9. If our scope of delivery also includes third-party software and the third-party software is defective, we assign all claims which are due us towards the producer or/and the sub supplier. The customer must first assert defects against these and we are only liable on a subsidiary basis if claims against the producer or sub suppliers are not enforceable.
- 6.10. Used goods we sell as described and/or inspected excluding any liability for defects. Anything to the contrary shall only apply if this has been expressly agreed, if a guarantee declaration has been explicitly confirmed, we acted culpably or injured life, body or health. In these cases, points 6.1 to 6.9 remain unaffected.

7. Liability to indemnify for damages and expenses

- 7.1. Our liability to indemnify for damages in case of minor negligence, in particular due to infringement of obligations arising from the contractual relationship and due to tortious action, is excluded, unless we have infringed an essential contractual obligation - an obligation whose fulfilment is essential to the proper execution of the contract or upon whose observance customer regularly can rely on. In this case, our liability shall be limited to the foreseeable damage, which is typical of the contract, of which we had to anticipate on conclusion of the contract because of known circumstances.
- 7.2. Damages up to a value of € 25,000 shall be considered as contractually typical and foreseeable.
- 7.3. The customer is obliged to inform us explicitly in written form with each order about the risk of an exceptional high damage, otherwise we are not liable for such a damage. An exceptional high damage occurs in particular if the customer has committed to his customers or other third parties a contractual penalty, consolidation of damages or other payment in the event of a defect or delay, which is connected with our performance to the customer.
- 7.4. In determination of the amount of the reimbursement claims we are obliged to meet, due account shall be taken in our favor of our business circumstances, the nature, scope and duration of the business relationship in question, any causal contributions or shared responsibility on the part of the customer (in accordance with § 254 of the BGB [German Civil Code]) and any exceptionally unfavorable conditions for installation of the goods. In particular, the reimbursement amounts, costs and expenses incumbent on us shall stand in an appropriate relation to the value of the goods.
- 7.5. Our liability for damages to life, limb or health, for cases of deliberate intent to harm or gross negligence, for lacking of a guaranteed product property and liability pursuant to the product liability law shall not be limited.
- 7.6. The above specified liability provisions apply accordingly to our government bodies, statutory representatives, employees and other auxiliary persons.

8. Statutory limitation of claims relating to defects and indemnification claims

The statutory term of limitation for customer claims on account of a defect shall be reduced to one year. The statutory term of limitation for customer claims to indemnification for damages and expenses which are not based on a defect in the goods shall also be one year. The shortened statutory terms of limitation do not apply to claims for damages in cases of injury to life, body or health, or to claims due to intention or gross negligence breach of duty.

9. Rights

- 9.1. We hereby reserve title and copyright in respect of diagrams, technical drawings, calculations, cost estimates and other documentation. These documents may be made accessible to third parties only subject to our prior consent.
- 9.2. In relation to standard software and firmware, the customer shall be granted only a simple and non-exclusive right of use on the agreed equipment. If the software of third parties be included within the scope of our delivery, the terms and conditions of the latter's licences shall accordingly apply likewise, and we will make these available to the customer on request if they have not already been supplied.

10. Confidentiality

- 10.1. The customer shall be obliged to treat all commercial and technical details that come to his knowledge as a result of his business relationship with ourselves as being subject to the requirements of business secrecy and to use them only for the purposes of our cooperation, in so far as they are or not already or get generally known, this applies particularly to all information marked as "secret", "confidential" or similar. The information must be kept carefully and protected against unauthorized access by third parties. This applies in particular to vicarious agents (including employees) of the client. These must be committed accordingly in writing; the obligations are to be presented to us on request.
- 10.2. Unless otherwise prohibited by copyright or any other law, the customer is not permitted to obtain a trade secret by observing, examining, dismantling or testing the provided products or objects.



11. Concluding stipulations

11.1. German law applies, with exclusion of UN Sales Convention (CISG).

11.2. If the customer is a merchant, a legal entity under public law, or public-law special fund under public law, our place of business or, at our discretion, also at the customer's place of shall be the place of jurisdiction for all disputes arising from and in connection with the contractual relationship. This also applies in cases where the customer does not have a domestic general place of jurisdiction, has moved his domicile or usual place of residence abroad after the conclusion of the contract, or neither the domicile nor the usual place of residence of the customer is known at the time the lawsuit is filed.

11.3. If a particular stipulation of these terms and conditions should be or become ineffective, the effectiveness of the other provisions shall not be affected thereby.

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Translator's Disclaimer

This document is a translation and as such not legally binding. In case of doubt, the German original should be consulted.