

International Delivery Conditions of WDM Wolfshagener Draht- und Metallverarbeitung GmbH

I. Applicability

1. These International Delivery Conditions apply in respect of any customers which do not have their relevant place of business in Germany. For customers that have their place of business in Germany, the sales and delivery conditions of WDM Wolfshagener Draht- und Metallverarbeitung GmbH apply, and they will be provided on request. The relevant location in each case is the place of business which concludes the contract in its own name. These conditions apply to this contract and any subsequent contracts which predominantly relate to the delivery of goods to the customer.
2. We are not bound by the customer's conflicting or differing conditions, even if we do not explicitly object to them or if – regardless of the customer's conflicting or differing conditions – we provide services or accept the customer's services without reservation. Likewise, we are not bound by the customer's terms of business – if independently of the content of these conditions – they differ from the legal provisions.
3. The written form requirement within the meaning of these conditions is fulfilled by any text format (electronic mail or faxes).

II. Concluding of the contract

1. Orders must be drawn up in writing. If the order differs from our quotation, the customer must highlight the differences.
2. Any orders accepted by us only become effective once we issue a written order confirmation. Neither our making preparations for performing a contract nor any other behaviour by us entitles the customer to place reliance on the concluding of the contract. We may issue the written order confirmation within 14 days of us receiving the order. The customer cannot revoke the order up to this point in time.
3. Our written order confirmation is deemed to be received by the customer on time if it receives it within 14 calendar days after the date on which it was printed. The customer shall inform us promptly of any delay in receiving it.
4. Our written order confirmation specifies the scope of all the contents of the contract, and it leads to a contract being concluded even if (except in respect of the purchase price and the specification of the goods) it differs from statements made by the customer, and specifically even if such differences relate to the exclusive applicability of these International Delivery Conditions. Special requests by the customer, in particular for warranties or guarantees regarding the properties of the goods or the performance of the contract, are subject to our prior written confirmation. Irrespective of the type and extent of the differences, the contract does not come into being only if the customer specifies its objections in writing and if the corresponding letter is received by us no later than seven days after the written order confirmation is received.

III. Object to be delivered, delivery

1. The nature of the goods and any other duties assumed by us are governed exclusively by the contents of the order confirmation and any further agreements which are concluded with the customer in writing.

The customer must inform us of special usage conditions for the goods that are to be delivered, in particular if the goods are to be suitable for other uses in addition to their normal use, or if they are to be used under unusual conditions or conditions which pose a particular health, safety or environmental risk.

2. We are not obliged to pay any levies that arise elsewhere than in Groß-Pankow/Germany, or to use or adhere to measuring or weighing systems or packaging/ labelling/marketing rules, or to fulfil certification duties, which apply elsewhere than in Groß-Pankow/Germany. The goods conform to the rules and regulations of the Federal Republic of Germany unless otherwise stated in the order confirmation.
3. Agreed delivery periods are subject to the proviso that the customer provides the documents (approvals, drawings, releases, licences, and plans) etc. which it has to procure, that it meets its payment obligations, and that it fulfils all its other duties in a timely manner. Otherwise, the agreed delivery periods begin on the date of our written order confirmation. We are entitled to make early deliveries.
4. Without waiving any other legal rights, we are entitled to fulfil contractual duties after the specified deadline for doing so has passed if we inform the customer of the missing of the deadline as well as the period required for subsequent performance. The customer may refuse to accept subsequent performance within a reasonable period if it is not reasonable from its point of view. The notice of refusal must be received by us before substitute performance begins.
5. Unless otherwise agreed, we deliver on an ex works basis (Incoterms 2010).
6. If we are concerned that the customer may not fulfil all or part of its contractual duties, we are entitled to postpone performance. This applies in particular if the customer fulfils its payment obligations towards us or third parties in an inadequate or delayed manner, or if a limit set by a credit insurer is exceeded, or if it will be exceeded if we make delivery. Instead of postponing performance, we are entitled at our option to make the already confirmed delivery dependent on the provision of a confirmed letter of credit issued by a reputable credit institution, or alternatively to demand advance payment.

IV. Prices and payment terms

1. The prices stated in our order confirmation apply. We may demand a price adjustment from the customer if the price of the raw materials has increased by at least 3% since the date of the order confirmation.
If there is a period of more than four months between the order confirmation and delivery, and if the prices of materials or wages increase during this period, we are entitled to adjust the price even without the customer's agreement.
The customer must bear all the levies, fees, taxes and costs relating to technical testing etc. which arise outside of Germany.
2. Payment is basis in accordance with the specific agreement reached as part of the order confirmation.

3. The customer gives its assurance that it meets the conditions for VAT-exempt deliveries according to the relevant German legislation.
4. If the customer gets into payment arrears, it must add interest to the outstanding amounts at 8% above the ECB's base rate as from the start of the arrears.
5. Legal rights of the customer to offset against our claims are excluded unless the counterclaim is in the same currency, is based on the customer's own right, and has either been established according to a legally binding judgment or is payable or uncontested, or has been recognised by us in writing.
6. The customer is not entitled to exercise a lien unless we have materially breached duties arising from the same contractual relationship despite having received a written warning and have not provided any reasonable collateral.

V. Goods which do not conform to the contract or goods with defective title

1. The goods do not conform to the contract if the customer proves that according to the provisions of clause III.1 at the time when the risk is transferred they differ significantly from the agreed requirements set out in the written order confirmation in relation to quantity, packaging, quality or type, or – if no requirements have been agreed – they are not suitable for the usual purposes of use in 16928 Groß-Pankow/Germany. If the goods do not conform to the contract according to the provisions that are applicable in 16928 Groß-Pankow/Germany, they are nevertheless not contractually non-conformant if the applicable legal provisions at the customer's head office location do not preclude their use or suitability for use.
2. The customer must examine the goods in accordance with the legal provisions and check them for identifiable and typical contractual non-conformities.
3. Irrespective of any other legal exclusions or restrictions of our responsibility, title to the goods is defective if the customer proves that at the time when the risk was transferred the goods were not free of enforceable third party rights or claims. Third party industrial property rights or other intellectual property rights or claims can only constitute defective title if these rights are registered and published in Germany. Even if there are defects in the title to the goods according to German law, they are immaterial and do not justify the making of claims by the customer if the defect of title does not preclude usage of the goods and their use/processing at the place of use.
4. The customer must notify the contractual non-conformity and defects in title without delay. Following proper notification, it may pursue the legal remedies that are specified in these International Delivery Conditions. It is not entitled to make any other claims. The customer's legal remedies based on defective title are subject to the same limitation period conditions as for claims due to material defects.
5. If according to the provisions of these International Delivery Conditions the customer has legal remedies owing to the delivery of goods which are contractually non-conformant and/or which have defective title, it may in accordance with the CISG demand that we make a replacement delivery or undertake rectification, or alternatively it may demand a reduction in the purchase price. It is not entitled to make any other claims for performance. We are entitled to rectify contractually non-conformant goods or to deliver a replacement for them.

6. The limitation period in respect of claims made by the customer on account of defects is 12 months following the delivery of the goods.

VI. Cancellation of the contract

1. The customer may demand the cancellation of the contract only if the legal preconditions for doing so are fulfilled and if it has warned us in writing of its intention to do so, and if a reasonable time limit set for us has elapsed without us taking the necessary action. If the customer demands replacement delivery, rectification or another form of performance, it is tied to this form of legal redress for a reasonable period without being able to cancel the contract.
2. Irrespective of any further legal rights, we may cancel all or part of the contract without replacement if the customer disputes the applicability of these International Delivery Conditions, if the written order confirmation is received by the customer more than 14 days after the date on which it was printed, if the opening of insolvency proceedings in respect of the customer's assets is applied for, if the customer fails to fulfil material obligations towards us without a reason justifying such failure, if it has provided incorrect information about its creditworthiness, or if based on a commercial assessment of the situation the customer is not expected to meet its payment obligations for other reasons. In addition, the cancellation of the contract is permitted if we ourselves do not receive deliveries on time, or do not receive the correct deliveries, or if owing to other reasons it is no longer possible for us to meet our performance obligations under reasonable conditions.

VII. Damages

1. We are only obliged to pay damages subject to the following provisos:
 - i) the customer must firstly seek other legal remedies, and it may only demand damages owing to residual losses, but not instead of other legal remedies.
 - ii) We are not liable for the conduct of sub-suppliers or subcontractors, or for losses which are partly caused by the customer.
 - iii) We are not liable for damages in the event of disruptions that are attributable to force majeure events.
 - iv) In other instances we are only liable if our official company bodies or our servants breach contractual duties that we owe to the customer either intentionally or through gross negligence.
2. If we are liable for damages, we only have to provide compensation for the loss which is foreseeable and typical under contract. The customer must inform us in writing of special risks, atypical risks of loss or damage, and unusual loss amounts before the contract is concluded.
3. We are not liable for loss of profit or immaterial disturbance of property rights.
4. The level of the damages for late or outstanding delivery is limited to a 0.5% of the value of the contractually non-conformant element of performance for each full week of delay, subject to a maximum of 6%, and for other breaches of duty 200% of the value of the contractually non-conformant element of performance.

This does not apply if our official company bodies or managers are to blame due to their intentional acts or omissions or their gross negligence.

5. Furthermore, the restriction of liability does not apply to losses resulting from death, bodily injury or health impairment.
6. No claim may be made against our employees, representatives and/or servants due to the breach of contractual duties that we are under. Recourse to competing legal bases of claim is also not permitted.

VIII. Other provisions

1. The goods remain our property until the entire amount that is payable to us by the customer has been paid. We reserve rights of ownership, copyright, and all other industrial property rights as well as rights derived from know-how associated with any illustrations, drawings, calculations and other documents that are provided to the customer in physical or electronic form, and rights derived from software.
2. The place of performance, payment and fulfilment in respect of all the obligations arising from the contract entered into with the customer is Groß-Pankow/Germany. The agreeing of Incoterms does not alter these performance rules.
3. The legal relationships between the customer and us are governed by the United Nations Convention on Contracts for the International Sale of Goods dated 11.04.80 - (CISG) and the relevant practices in Groß-Pankow/Germany. In instances where the CISG does not apply, German law which is not internationally standardised applies.
4. All disputes which arise from or in connection with the contractual relationships between the customer and us will be definitively settled according to the arbitration rules of the Deutsche Institution für Schiedsgerichtsbarkeit e. V. (DIS) [German Institution of Arbitration], excluding recourse to the ordinary courts. The location of the arbitration proceedings is Frankfurt. The language of the arbitration proceedings is English. The number of arbitrators is 1 in the case of an amount in dispute of up to EUR 100,000, and 3 arbitrators must be used in the case of greater amounts.