

General Terms & Conditions of Delivery and Payment of Würth Industrie Service GmbH & Co. KG

I. Definition, scope of validity

1. The General Terms & Conditions of Delivery and Payment of Würth Industrie Service GmbH & Co. KG ("Terms") set forth hereunder apply solely to companies in the meaning of Section 310, Para. 1 German Civil Code (Bürgerliches Gesetzbuch, BGB).
2. The Terms apply exclusively; terms & conditions of the order party which oppose or deviate from these Terms shall not be recognized by Würth Industrie Service GmbH & Co. KG ("Würth"), save Würth has expressly accepted their validity in writing. The Terms apply even if Würth unconditionally executes a delivery to the order party while it is in the knowledge of terms and conditions of the order party which oppose or deviate from the Terms.
3. Agreements or side letters shall only be effective when confirmed in writing by Würth.

II. Offers, order confirmation

1. Würth may accept the order party's offer within four weeks.
2. A delivery contract is only formed through written order confirmation, no later however than at the time of merchandise dispatch. Conveyance by means of remote data transmission shall also constitute written form. If Würth can present a transmission report proving remission of a declaration by fax or remote data transmission, it shall be assumed that the order party has received the declaration.
3. Should Würth avail itself of a tele- or media-service for the purpose of concluding a contract, the order party shall waive notification of the information provided for under the ordinance pursuant to Article 241, Introductory Act to the German Civil Code (Einführungsgesetz zum Bürgerlichen Gesetzbuch, EGBGB) and of confirmation of receipt of his order. Electronically submitted orders shall only be deemed delivered when they have been called up and opened by Würth. Würth reserves the right to delete orders without having opened them.

III. Prices, terms of payment

1. All prices of Würth are ex-warehouse plus the statutory rate of value added tax (sales tax) valid at the time of billing.
2. Price changes are permissible if more than six weeks lie between contractual execution and the agreed delivery date. If wages, the cost of materials or market input prices rise thereafter but before production of the delivery, Würth may increase the price appropriately to reflect its own price increases.
3. Insofar as Würth takes back delivered merchandise without the order party having a statutory right thereto, Würth shall calculate a re-storage fee of 20 percent of the merchandise value, however no less than 15 euros, for the ensuing additional effort.
4. For small orders with a net merchandise value of less than 150.00 euros, a small-volume markup shall be charged.
5. If not otherwise agreed, payments shall be due on delivery, however no later than on receipt of invoice. Würth grants a two percent (2%) discount for payments settled within 10 days of the billing date, otherwise invoices are payable within 20 days without deduction. Without prejudice thereto, Würth may at any time demand payment matching delivery without stating reasons therefor.
6. For all means of payment, the date of receipt of payment is that date on which Würth, or a third party with claims vis-à-vis Würth, has the right to dispose of the payment amount.

IV. Default in payment

1. In addition to the statutory conditions, the order party may, after the payment due date, be rendered in default through dunning. If a specific calendar day has been set as payment date, the order party is deemed in default even without dunning. In the event of payment default by the order party, Würth is additionally entitled to hold back all deliveries and performances.
2. In the event of payment default or breaching of the credit limit, Würth retains the right to hold back the merchandise deliveries until such time as all receivables have been settled or, in due consideration of the order value, the credit limit is no longer breached.
3. If, notwithstanding dunning and a set deadline, the order party fails to fulfill his payment obligations within the set deadline, or an application is made for opening insolvency proceedings for the assets of the order party or his statutory representative, the entire residual receivables including all incidental costs shall fall due immediately. In such cases, Würth may: declare rescission of all still unfulfilled contracts; reclaim already delivered but still unpaid merchandise from the reservation of title; and demand reimbursement of all costs causally related to the rescission.
4. The exceeding of the agreed payment terms directly leads to a transfer of data of the order party to credit agencies and cashing companies cooperating with Würth according to the regulation of §28 a BDSG.

V. Reservation of title

1. Würth reserves title to the delivered items until all payments from the business relationship with the order party are available at its disposal. This reservation of title shall apply to the accepted outstanding balance.

2. The exercising of reservation of title and attachment of the delivery items by Würth does not constitute rescission of contract insofar as the terms of the German Consumer Credit Act (Verbraucherkreditgesetz) do not apply or Würth has expressly declared this in writing.
3. The order party may resell the delivered items in its regular business activities, but herewith already assigns to Würth all receivables up to the value of the purchase price (including value added tax) agreed between Würth and the order party which the order party accrues as a result of said resale, irrespective of whether the delivery items are resold without or after processing. The order party is authorized to collect these receivables even after their assignment. The authorization of Würth to collect these receivables itself remains unaffected thereby; Würth shall not however collect the receivables as long as the order party correctly fulfills his payment obligations and is not in payment default. If this is the case, however, Würth may demand that the order party: discloses the assigned receivables and their obligors; provides all the details needed to enable collection; hands out the associated documents; and informs the obligors (third parties) of the assignment.
4. The processing or re-forming of the merchandise by the order party is always performed on Würth's behalf. If the delivery items are processed with other items not belonging to Würth, Würth shall acquire co-ownership of the new entity in the ratio of the value of the delivery items to the value of the other processed entities at the time of processing.
5. If the delivery items are intermixed inseparably with other items not belonging to Würth, Würth shall acquire co-ownership of the new entity in the ratio of the value of the delivery items to the value of the other mixed items. The order party shall safeguard the co-ownership for Würth.
6. The order party may neither attach nor pledge the delivery items as security. In the event of attachments or other disposals by third parties, the order party shall inform Würth immediately and furnish all the information and documents necessary to safeguard Würth's rights. Enforcement officials and third parties shall be informed about Würth's ownership rights.
7. Würth shall, at the order party's request, release all collateral in its possession that exceeds by more than 20 percent the value of the collateralized, non-settled receivables. Würth shall at its own discretion elect the collateral to be released.

VI. Deliveries, delivery time

1. Adherence to agreed delivery and performance dates is conditional upon the clarification of all technical issues and the timely payment and/or fulfillment of the obligations of the order party. On failure thereof, the deadlines shall be extended appropriately.
2. Würth shall furnish the order party with contractual merchandise subject to the timely and correct delivery of merchandise to Würth itself.
3. Partial deliveries are permitted insofar as they have no detrimental impact for the order party.
4. For consumer goods, Würth reserves the right of up to 10 percent short or excess deliveries.
5. Should the delivery be deferred at the order party's request, the merchandise shall be safekept at Würth at the order party's risk and cost.
6. With regard to the specified dimensions of the delivery items, Würth reserves the right to customary deviations, save adherence to the dimensions has been expressly pledged.
7. The delivery date shall be extended in the event of force majeure, strike, non-culpable incapacity and adverse weather conditions by the duration of the hindrance.
8. Should the order party be unable to accept the contractual merchandise in a timely manner or fail to fulfill other cooperative obligations, Würth may give precedence to other third party assignments and extend the delivery time accordingly. Without prejudice to further claims, Würth reserves the right to demand compensation for incurred damages, including any additional expenditures, arising as a result.

VII. Shipping, passage of risk

1. If not alternatively stated in the order confirmation, the order party shall shoulder the delivery costs. Shipping shall be at the risk and expense of the order party. The same applies to returned merchandise.
2. Transportation packaging and all other forms of packaging will not be taken back.

VIII. Industrial property rights

1. The order party shall inform Würth immediately about third-party industrial property right allegations relating to the delivery items, and to cede to Würth the process of handling Würth's legal defense at its own expense. Third-party industrial property right allegations may require Würth to modify at its own expense merchandise that has already been delivered or paid for.
2. Should a third party prohibit Würth from manufacturing or delivering merchandise on citation of industrial property-right titles of that third party, Würth may - to the extent that Würth is not responsible for the industrial property right violation - suspend the work / deliveries until such time as the legal situation has been clarified by the order

party and third party. Würth is entitled to withdraw from contract, should the ensuing delay render the continuance of the order unreasonable for Würth.

3. The order party assumes liability vis-à-vis Würth regarding the fact that his rendered performances do not violate third party industrial property rights, and indemnifies Würth from all third-party claims in this regard.

IX. Liability for default

1. Würth assumes liability under the statutory provisions insofar as the order party asserts claims for compensation based on intent or gross negligence on the part of the representatives or vicarious agents of Würth. Insofar as Würth is not culpable of intentional contractual violation in the framework of its default liability, compensation for damages shall be limited to the typically occurring, foreseeable damage amount.
2. Würth assumes liability for default under the contractual provisions to the extent that Würth blamably violated a cardinal contractual obligation. Insofar as Würth is not culpable of intentional contractual violation in this instance, compensation for damages shall be limited to the typically occurring, foreseeable damage amount.
3. Liability for default due to blamable damage to life and limb, or to health, remains unaffected hereby.
4. Unless otherwise provided for above, liability for default is excluded.

X. Liability for defects

1. Obvious defects shall be reprehended and reported to Würth immediately.
 - 1.1 Insofar as a defect exists for which Würth is responsible, Würth shall at its own election perform subsequent improvement or replace the defective item. In the case of subsequent improvement, Würth shall bear all the labor and material costs needed to remedy the defect, insofar as these costs do not increase as a result of the purchase item having to be moved to a location other than the place of fulfillment. Such costs shall only be borne up to a maximum amount of three times the value of the defective item.
 - 1.2 If the subsequent improvement or replacement is abortive, the order party may demand abatement of the respective remuneration for this order.
 - 1.3 If Würth is not blamable for the defect, warranty rights are excluded.
 - 1.4 If Würth is contractually obliged to fulfill a specific obligation, replacement is excluded in the event of defects.
2. Würth assumes liability for defects under the statutory provisions insofar as Würth guilefully concealed the defect or had guaranteed a characteristic in the entity.
3. Würth assumes liability for defects under the statutory provisions insofar as the order party asserts claims for compensation based on intent or gross negligence on the part of the representatives or vicarious agents of Würth. Insofar as Würth is not culpable of intentional contractual violation in the framework of its default liability, compensation for damages shall be limited to the typically occurring, foreseeable damage amount.
4. Würth assumes liability for defects under the contractual provisions to the extent that Würth blamably violated a cardinal contractual obligation. Insofar as Würth is not culpable of intentional contractual violation in this instance, compensation for damages shall be limited to the typically occurring, foreseeable damage amount.
5. Liability for defects relating to blamable damage to life and limb, or to health, remains unaffected hereby; also liability under the German Product Liability Act (Produkthaftungsgesetz).
6. Unless otherwise provided for above, liability for defect is excluded.
7. Claims under Section 437 BGB are stuck by the statute of limitation twelve months after passage of risk, unless such claims involve items which are usually used in buildings and have caused damage thereto.
8. The limitation period in the event of delivery recourse under Sections 478, 479 BGB remains unaffected; it amounts to five years, calculated from the delivery of the defective entity.

XI. Hydrogen brittleness

1. The contracting parties are aware of the various causes and problems of a hydrogen-induced brittle fracture, in particular in the case of galvanic plated, high-duty products or products intended for hardened application in accordance with DIN ISO 4042 as from an ultimate tensile strength of 1000 N/mm² and surface or core hardness as from 320 Vickers pyramid hardness. Among other things, there is a possibility of a hydrogen-induced brittle fracture in the case of these products, and this cannot be completely ruled out.
2. If it becomes apparent that the risk of hydrogen brittleness is reduced in the area in which the delivered product is used (e.g. in relation to construction or as a safety part), XXX undertakes to co-ordinate the implementation of the process and the procurement of the raw material in detail with Würth.
3. DIN ISO 4042 is deemed to constitute an element of the contract. If the operations comply with the procedure, liability for the consequences of a defect related to a hydrogen brittle fracture shall be excluded unless Würth had caused such a defect as a result of intent or gross negligence. This shall not affect the liability in accordance with the German Product Liability Act.

XII. Overall liability

1. For all other claims for compensation, Würth shall – regardless of the legal nature of the asserted claim, especially for claims relating to culpa in contrahendo, other breaches of duty, or tortious liability claims for compensation for damage to property

under Section 823 BGB – only assume liability under the provisions of Item X, Paras. 2,3,4,5 and 6. Apart from this, all other liability is excluded.

2. Insofar as Würth's liability for damage compensation is excluded or limited by this Item, this applies additionally in regard to the personal damage compensation liability of Würth's employees, staff, co-workers, representatives and vicarious agents.
3. The limitation for all claims not covered by the limitation for material defects in the item shall be 18 months. It commences from the moment the defect was discovered, respectively from the moment that the order party should, without gross negligence, have recognized the defect and damaging party.

XIII. Counterclaims, transferability

1. The order party may only offset if its counterclaims have been legally recognized, are indisputable or have been confirmed by Würth. The order party is also entitled to exercise a right of lien only to the extent that its counterclaim is based on the same contractual relationship.
2. The order party may, only subject to Würth's consent, surrender rights ensuing from a contract executed with Würth.

XIV. Würth's rescission rights

1. In the event of an unforeseen incident outside Würth's responsibility that considerably changes the economic meaning or content of the performance, or that has a significant impact on Würth's operations, or in the event of an incident outside Würth's responsibility that subsequently renders contractual implementation unreasonable / impossible for Würth, Würth shall be entitled to withdraw from contract either entirely or partially, save a partial withdrawal would be unreasonable for the order party. Further statutory rescission rights are not affected hereby.
2. Order party claims for compensation for damages due to such a withdrawal are barred. Should Würth wish to avail itself of the rescission right, Würth shall inform the order party, also if an extension to the delivery deadline had initially been agreed with the order party.

XV. Place of fulfillment, legal venue, applicable law, miscellaneous

1. Unless otherwise expressly provided for, Würth's place of business is the place of fulfillment.
2. The legal venue is the court of law responsible for Würth's place of business. Würth is, however, entitled to take legal action against the order party at any other valid legal venue. The same applies if the order party has no general legal venue in Germany, or if after contractual execution it relocates its place of residence or usual domicile to a place outside Germany, or if its place of residence or usual domicile is unknown at the time legal action is instituted.
3. Should any provision or part-provision of these Terms be or become invalid, the validity of the remaining provisions or part-provision shall in no way be affected. The concerned provisions or agreements have to be seen, respectively have to be complemented, in such a manner that the economic intent is reached as close as possible. This is also valid for subjects not being regulated in this provision.

XVI. Foreign contractual partners

Insofar as the contractual partner's subsidiary is located outside the Federal Republic of Germany, the aforementioned provisions shall, in the absence of alternative provisions herein, apply and be interpreted exclusively in accordance with German law.