



## General Terms and Conditions of Sale and Delivery

### 1. General

- 1.1. These terms and conditions as well as all and any separate contractual agreements form the basis for all deliveries and services. Differing conditions of purchase of the customer do not become part of the contract even on acceptance of order.
- 1.2. Werth reserves proprietary rights and copyrights on samples, cost estimates, drawings and similar information of a physical or non-physical nature - including in electronic form; these may not be made available to third parties. Werth commits itself to the confidentiality of information and documentation designated confidential by the customer and will make it available to third parties only with the permission of the customer.

### 2. Delivery Volume

The volume of our delivery obligations is determined by our written order confirmation. Subsidiary agreements and alterations must be made in writing.

### 3. Price and Payment

- 3.1. The prices are valid unless otherwise agreed ex works including loading at works, however, exclusive of packaging and unloading. VAT at the respectively applicable legal rate must be added to the prices.
- 3.2. In as far as a separate agreement has not been made, payment without any deductions is to be made to Werth's account for order values of up to of 10, 000 EUR.
  - within 10 days from date of invoice with 2% discount or 30 days net for an order value of more than 10,000 EUR.
  - 1/3 part payment net after receipt of order confirmation.
  - the balance within 10 days of invoice date with 2% discount - on the balance or 30 days net.
- 3.3. Werth is not obliged to accept bills of exchange. The customer bears any and all costs arising from the bill of exchange. Should a bill of exchange not be honored, all outstanding amounts owed to Werth by the customer become due immediately.
- 3.4. The customer only has the right to hold back payments or to set them off with a counterclaim in as far as his counterclaims are undisputed or have been legally confirmed.

### 4. Delivery Period, Delays in Delivery

- 4.1. The delivery period ensues from the agreements made by the contractual parties. The prerequisite for compliance with them by Werth is that all commercial and technical queries between the contractual parties have been resolved and that the customer has fulfilled all of the obligations incumbent upon him, like, for example, making a part payment. Should this not be the case, the delivery period will be extended accordingly. This is not valid in as far as Werth is responsible for the delay in delivery.
- 4.2. Compliance with the delivery date is subject to Werth itself being correctly and punctually supplied.
- 4.3. The delivery period has been met, if the object of delivery has left the works before the former has expired or a notification that the goods are ready to be dispatched has been sent. In as far as an acceptance of the goods is to take place, the date at which this is to take place - except when the goods are justifiably refused - is applicable and decisive, alternatively notification that the goods are ready to be accepted.
- 4.4. Should dispatch or acceptance of the object of delivery be delayed for reasons for which the customer is responsible, then the costs arising 1 from the delay in delivery will be charged to him beginning one month after notification of readiness for dispatch or acceptance thereof.
- 4.5. Should non-compliance with the delivery period be due to acts of God, industrial disputes, or other occurrences, which are outside Werth's influence, the delivery period is extended accordingly. Werth will inform the customer of the beginning and the end of such occurrences as quickly as possible.
- 4.6. The customer can withdraw from the contract without notice, if the obligations to be performed finally become impossible for Werth in their entirety before the passing of risk. In addition to this, the customer can also withdraw from the contract if one part of a delivery in an order becomes impossible and he has a justified reason to reject a part shipment. If this is not the case, the customer is obliged to pay the contractual price accordingly allotted to the part shipment. The same is valid for inability to comply on the part of Werth. Otherwise section 8.2 is valid. Should the impossibility of performance or the inability to comply occur during delay in acceptance of the goods or if the customer is solely or predominantly responsible for the situation, his



obligation for counter performance remains.

- 4.7. If the customer grants Werth an appropriate period of time to perform when Werth is in delay - under consideration of the legal exceptions- and this period is also not complied with, the customer is entitled to withdraw according to the legal regulations.

Further claims with reference to delay in delivery are determined exclusively by paragraph 8.2. of these terms and conditions.

## **5. Passing of Risk, Acceptance of Goods**

- 5.1. Risk passes to the customer when the object of delivery has left the works and even in the case of part shipments being made or Werth having agreed to perform other services within a contract, such as pay dispatch costs or arrange for delivery and installation. As far as goods are to be accepted, then this is applicable and decisive for the passing of risk. This must be carried out immediately on the agreed date of delivery. The customer is not entitled to refuse delivery of the goods if a non-essential fault is detected.
- 5.2. Should dispatch or acceptance of the goods be delayed or not take place due to circumstances for which Werth is not responsible, the risk passes to the customer on the day of notification that the goods are ready to be dispatched or accepted. Werth obliges itself to conclude insurance contracts requested by the customer at the customer's cost.
- 5.3. Part shipments are admissible in as far as this is reasonable for the customer.

## **6. Reservation of Ownership**

- 6.1. Werth reserves ownership of the object of delivery until all payments resulting from the contract of delivery have been made.
- 6.2. Werth is entitled to insure the object of delivery against theft, breakages, fire, water and other damages at the cost of the customer; in as far as the customer has not proved to have concluded such an insurance contract himself.
- 6.3. The customer is not permitted to either sell the object of delivery, nor levy execution upon it, nor pass on title as a security. In the case of levies of execution as well as seizures or other transfer of possession to third parties, the customer is obliged to inform Werth of this immediately.
- 6.4. In the case of behavior in violation of contract by the customer, in particular in the case of default in payment, Werth is entitled to take back the object of delivery after demand for payment and the customer is obliged to give up possession thereof. The enforcement of the reservation of ownership as well as the levy of execution upon the object of delivery by the seller does not constitute a withdrawal from the contract.
- 6.5. Application for insolvency proceedings to be opened entitles Werth to withdraw from the contract and to demand the immediate return of the object of delivery.

## **7. Warranty**

Werth guarantees the delivery against defects and warranties of title to the exception of all other claims - with the reservation of section 8 - as follows:

### Defects

- 7.1. All those parts which are deemed to be faulty due to circumstances occurring prior to the passing of risk are to be repaired or corrected free of charge or redelivered, according to Werth's own estimation. If such faults are detected, Werth is to be informed immediately in writing. Replaced parts become property of Werth.
- 7.2. The customer is obliged to give Werth the necessary time and opportunity to carry out all of the repairs and deliveries of replacement parts deemed necessary by Werth; otherwise Werth is exempt from liability for any consequences occurring from this. Only in urgent cases in which industrial safety is jeopardized or in order to avoid disproportionately large amounts of damage, in the case of which Werth is to be informed immediately, does the customer have the right to correct the fault himself or have it corrected by a third party and to demand reimbursement from Werth for the costs arising from this.
- 7.3. From the costs arising from the repairs or delivery of replacement parts - in as far as the complaint turns out to be justified - Werth bears the costs of the replacement parts including dispatch thereof as well as reasonable costs for de-installation and installation, further, if this can be equitably demanded by the individual case in question, the costs resulting from the provision of its fitters and assistants where necessary.



- 7.4. The customer has the right to withdraw from the contract within the framework of the legal regulations, if Werth - under consideration of the legal exceptions - has allowed a reasonable extension period set for him for the repair or the delivery of replacement parts with reference to faults to pass by without any action being taken. In the case of a minor fault, the customer only has the right to a reduction in the contract price. The right to a reduction of the contract price is otherwise excluded.
- 7.5. No warranty is given in the following cases in particular:  
Inappropriate or unqualified use, faulty installation or operating begin by the customer or a third party, natural wear and tear, faulty or negligent treatment, improper maintenance, inappropriate production equipment and industrial facilities, faulty or inadequate building work, unsuitable building foundation, chemical, electrochemical or electrical influences - in as far as Werth is not responsible for them.
- 7.6. If the customer or a third party repair faults improperly, Werth is not liable for any consequences of this. The same is valid for any alterations made to the object of delivery without the prior permission of the seller.

#### Warranty of Title

- 7.7. Should use of the object of delivery lead to infringement of industrial proprietary rights or copyrights domestically, Werth will principally obtain for the customer at its own cost the right to further use or alter the object of delivery in a manner reasonable to the customer in such a way that the infringement of proprietary rights no longer exists.  
If this is not possible under economically feasible conditions or within an appropriate period of time, the customer is entitled to withdraw from the contract. Under these conditions, Werth is also entitled to withdraw from the contract.  
In addition to this, Werth exempts the customer from undisputed or legally confirmed and valid claims of the party entitled to industrial proprietary rights concerned.
- 7.8. The obligations of Werth stated in section 7.7. are final subject to section 8.2. for the case of infringements of proprietary rights and copyrights. They are only valid if:
- the customer informs Werth without delay about any infringements of proprietary rights and copy rights which have been claimed.
  - the customer supports Werth to an appropriate extent in their defense against the claims which have been made or enables Werth to carry out the modification work according to section 7.7.
  - all defensive measures including out of court settlements remain at the sole discretion of Werth.
  - the warranty of title is not the consequence of a instructions or directives issued by the customer and the legal infringement has not been caused by the customer making alterations to the object of delivery while acting without proper authority or has used them in a manner which is not in conformity with the conditions of the contract.

## **8. Liability**

- 8.1. If the object of delivery cannot be used by the customer in conformity with the conditions of the contract due to non-performance or faulty performance on the basis of suggestions made and consultations carried out before or after the conclusion of the contract or due to infringement of other subsidiary contractual obligations - in particular the instructions as to operation and use of the object of delivery - , then the conditions in sections 7 und 8.2 accordingly are valid to the exclusion of further claims from the customer .
- 8.2. For damage which has not occurred to the object of delivery itself, Werth is only liable - for whichever legal reasons whatsoever.
- in the case of wrongful intent,
  - in the case of gross negligence of the owner/bodies or senior employees in the case of culpable injury to life, limb and health,
  - in the case of defects, which have been maliciously not disclosed by Werth or the absence °if which Werth had guaranteed,
  - in the case of defects of the object of delivery, in as far as liability is assumed according to the product liability act for injury to persons and damage to property arising from privately used objects.

In the case of culpable infringement of important contractual obligations, Werth is also liable for gross negligence on behalf of non-senior employees and in the case of ordinary negligence, in the latter cash limited for the reasonably predictable damage typical for the contract.

Further claims are excluded.



## 9. Limitation of Actions

All claims by the customer - on whichever legal grounds whatsoever - become statute-barred in 12 months. For willful or malicious behavior as well for claims arising from the product liability act, the legal limitations are valid.

## 10. Use of Software

In so far as software is included in the scope of the order, the customer is granted a non-exclusive right to use the software including its documentation. It is given to the customer for use on the object of delivery for which it is intended. Use of the software on more than one system is prohibited.

The customer is only allowed to copy, change or translate the software within the legal limitations (§§ 69a following UrhG, i. e. Copyright Law). The conversion of the object code to the source code is not permissible. The customer obliges himself not to remove any specifications included by the manufacturer- in particular copyright notation - or to change them without prior permission from Werth.

Werth or the software suppliers reserve all other rights to the software and to the documentation including the copies. The granting of subsidiary licenses is not permitted.

## 11. Applicable Law, Place of Jurisdiction

11.1. The applicable law of the Federal Republic of Germany governing legal relations between domestic contractual parties to one another is exclusively valid for all legal relations between Werth and the customer.

11.2. Court of jurisdiction is the court of jurisdiction for Werth. Werth is, however, entitled to file a suit at the customer's principal place of business.

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