

Business Terms of Sale and Supply of WAGO Kontakttechnik GmbH (under Swiss law) & Co. KG



1 August 2005

I. General Provisions

1. The scope of deliveries and/or services (hereinafter referred to as "Supplies") shall be determined by the written declarations of both Parties. General Terms and Conditions of the Purchaser shall apply only if and when expressly accepted in writing by the supplier or the provider of services (hereinafter referred to as "Supplier").
2. The Supplier's Business Terms shall apply for all future transactions with the Purchaser, even if no further express reference is made to them in the individual case.
3. The Supplier's Business Terms shall apply only with respect to enterprises, legal persons under public law, or separate assets under public law.
4. The Supplier herewith reserves any industrial property rights and/or copyrights pertaining to its cost estimates, drawings and other documents (hereinafter referred to as "Documents"). The Documents shall not be made accessible to third parties without the Supplier's prior consent and shall, upon request, be returned without undue delay to the Supplier if the contract is not awarded to the Supplier. Sentences 1 and 2 shall apply mutatis mutandis to Documents of the Purchaser; these may, however, be made accessible to third parties to whom the Supplier may rightfully transfer Supplies.
5. The Purchaser shall have the non-exclusive right to use standard software, provided that it remains unchanged, is used within the agreed performance parameters, and on the agreed equipment. The Purchaser may make one backup copy without express agreement.
6. Oversupplies, partial and short supplies as well as adaptations to the Supplier's packing units are permissible insofar as they are acceptable for the Purchaser.

II. Offers, Prices and Terms of Payment

1. Offers of the Supplier are not binding in quantity, price and period of delivery. Orders shall be binding for the Supplier only if and as far as he has issued a confirmation of order or has shown his acceptance by effecting delivery.
2. Prices shall be ex works and exclude packing; value added tax ("VAT") shall be added at the then applicable rate.
3. If the Supplier has agreed to carry out installation, assembly or servicing work, unless otherwise agreed upon, the Purchaser shall pay the agreed remuneration and any incidental costs required, i.e. travelling expenses, costs for the transport of tools and equipment, and for personal luggage, as well as per diem allowances.
4. Unless otherwise indicated in the confirmation of order, the Supplier requires payment to be made within 14 days net after date of invoice without any deductions; in particular, a deduction of cash discount or the settlement of bank charges require a special written agreement.
5. If the Purchaser is responsible for a delay in payment, the Supplier is entitled to claim default interest at 8 per cent points over the respective basic rate of interest, pursuant to § 247 German Civil Code (= "Bürgerliches Gesetzbuch", "BGB"). If the Supplier is able to prove that there was higher damage caused by delay, he is entitled to assert a claim for this as well.
6. The Purchaser may set off only those claims that are undisputed or against which no legal recourse is possible.

III. Reservation of Ownership

1. Items pertaining to the Supplies ("Retained Goods", i.e. with the reservation of ownership in favour of the Supplier) shall remain the property of the Supplier until each and every claim asserted by the Supplier against the Purchaser arising out of a business connection has been satisfied. If the value of the overall security rights awarded to the Supplier exceeds the value of all secured claims by more than 20%, the Supplier shall release a corresponding portion of the security rights, if so requested by the Purchaser.
2. For the duration of the Reservation of Ownership, the Purchaser may not pledge the Retained Goods or use them as security, and resale shall be possible only for resellers in the ordinary course of their business and only on condition that the reseller receives payment from his customer or makes the transfer of property to the customer dependent upon the customer's fulfilling his obligation to effect payment.
3. a) If the Purchaser resells Retained Goods, he will already at this specific date assign by way of security any of his future claims against his customers arising from this resale, along with all accessory rights – including any potential net claims – without the requirement to issue any specific declarations later on. Where Retained Goods are resold together with other items, however, without contracting an individual price for such Retained Goods, the Purchaser will assign to the Supplier with preference to the remaining claims such a portion of the total price due which is equivalent to the price of the Retained Goods invoiced by the Supplier.
b) Upon substantiation of evidence for a justified interest, the Purchaser has to provide the Supplier with the information and underlying documentation required for the assertion of his rights against the customer.
c) Subject to revocation, the Purchaser is authorised to collect the assigned claims arising from resale. On the basis of an important and sound reason, in particular with regard to default in payment, suspension of payment, the petition to institute insolvency proceedings, and the protest of bills, or in the event that substantiated indications for an overindebtedness or imminent insolvency on the part of the Purchaser are presented, the Supplier is entitled to revoke the Purchaser's authorisation for the collection of claims. After prior warning – under observance of an adequate deadline – the Supplier, in addition, may disclose the assignment of securities, may utilise the assigned claims and last but not least, may demand the Purchaser's disclosure of the assignment of security towards the customer.

4. a) The Purchaser is allowed to process the Retained Goods or to combine them with other items. Processing, mixture or combining activities (in the following referred to as "processing activities") are performed for the Supplier. The Purchaser holds the new corporeal object in custody for the Supplier with the diligence of a prudent businessman. The new corporeal object is qualified as being Retained Goods.
b) When processing with other corporeal objects not belonging to the Supplier, the latter is awarded co-ownership in the new corporeal object at the proportionate amount which results from the ratio of the value of the processed, mixed or combined (in the following referred to as "processed") Retained Goods to the value of the remaining processed goods at the date of performing any processing activities. Assuming the Purchaser acquires sole ownership in the new corporeal object, both contracting parties – the Supplier and the Purchaser – agree that the Purchaser grants co-ownership to the Supplier in the new corporeal object arising from processing activities in proportion to the value of the processed Retained Goods to the remaining processed goods at the date of performing processing activities.
c) In case of selling the new item, the Purchaser shall herewith assign to the Supplier his claim against the customer arising from the resale, together with all accessory rights, without calling for any further particular declarations. The assignment of such a claim is, however, valid only to the amount which is equivalent to the value of the processed Retained Goods that the Supplier had invoiced. The portion of the claim assigned to the Supplier shall be satisfied with preference. As to the authorisation of collection, including the prerequisites for its revocation, No. 3.c) above shall apply mutatis mutandis.
d) If the Purchaser combines Retained Goods with real estate or movable assets, then the Purchaser will also assign his claim which has been awarded to him as remuneration for such a combination – without the requirement to issue any further declarations – to the Supplier with all accessory rights by way of security and in ratio to the value of the combined Retained Goods to the remaining combined goods at the date of combination.
5. The Purchaser shall inform the Supplier forthwith of any pledge, seizure or other alienation or act of intervention by third parties.
6. Where the Purchaser fails to fulfil his duties, especially with respect to default in payment, and after an unsuccessful expiry of an adequate time limit set to the Purchaser to make payment due, the Supplier shall be entitled to withdraw from the contract and to take back the Retained Goods; the legal provisions regarding the dispensability of setting a deadline remain unaffected therefrom. The Purchaser is obliged to surrender the Retained Goods.
7. The Purchaser is authorised to assign the claim arising from the resale within the scope of proper factoring, provided that the Supplier is notified of this assignment in advance and that the proceeds of factoring amount to at least the invoiced value of his Retained Goods, i.e. the goods in his ownership according to No. 1 above, or the goods in his joint ownership according to No. 4 above, from the sale of which the respective claim arises. The Purchaser hereby assigns to the Supplier already now all claims and other entitlements against the factor arising from the sale of the claims assigned to the Supplier by way of security; they shall serve similarly as security for his claims. The Supplier hereby accepts the above-mentioned assignments.

IV. Delivery Deadlines, Delays

1. Delivery times set for Supplies can be observed only if all the Documents to be supplied by the Purchaser, the necessary permits and releases, especially concerning plans, are received on time and if agreed terms of payment and other obligations of the Purchaser are fulfilled. Unless these conditions are fulfilled on time, delivery times set shall be extended correspondingly; this shall not apply where the Supplier is responsible for the delay.
2. If non-observance of the delivery times set is due to force majeure such as mobilization, war, rebellion or similar events, e.g. strike or lockout, such delivery times shall be extended accordingly.
3. Even if a delivery time is agreed upon and confirmed, the Supplier shall not be in default of delivery until he has received a written reminder. Should the Supplier be in default of delivery, the Purchaser shall set a reasonable additional period of time for delivery of at least two weeks.
4. If the Supplier is responsible for the delay (hereinafter referred to as "Delay") and the Purchaser demonstrably has suffered a loss therefrom, the Purchaser may claim compensation as liquidated damages of 0.5% for every full week of Delay, but in no case to exceed a total of 5% of the price of that part of the Supplies which, because of the Delay, could not be put to the intended use.
5. The Purchaser's claims for damages due to delayed Supplies as well as claims for damages in lieu of performance exceeding the limits specified in No. 4 above shall be excluded in all cases of delayed Supplies even after expiry of a statutory period of time set to the Supplier to effect delivery of the Supplies. This shall not apply in cases of mandatory liability based on intent, gross negligence, or due to injury to life, body or health; the above provisions do not imply a change in the burden of proof to the detriment of the Purchaser. A withdrawal from the contract by the Purchaser within the scope of the legal provisions shall be limited to cases where the Supplier is responsible for the delay.
6. At the Supplier's request, the Purchaser shall declare within a reasonable period of time whether or not he will withdraw from the contract and / or ask for damages in lieu of Supplies because of the delayed Supplies, or insists upon delivery of the Supplies.
7. If dispatch or shipment is delayed at the Purchaser's request by more than one month after notice of the readiness for dispatch was given, the Purchaser may be charged, for every month commenced, storage costs of 0.5% of the price

of the items of the Supplies, but in no case more than a total of 5 %. The parties to the contract may prove that higher or, as the case may be, lower storage costs have been incurred.

V. Passing of Risk

1. Even where delivery has been agreed upon freight free, the risk shall pass to the Purchaser if the Supplies do not include installation or assembly at the time when the Supplies had been shipped or picked up by the carrier. Upon request of the Purchaser, the Supplier shall insure the Supplies against the usual risks of transport at the expense of the Purchaser.
2. The risk shall pass to the Purchaser if dispatch, shipping, the start or performance of installation or assembly, the taking over in his own works or a trial run is delayed for reasons for which the Purchaser is responsible, or if the Purchaser has otherwise failed to accept the Supplies.

VI. Installation and Assembly

In the course of business between Purchaser and Supplier not applicable.

VII. Taking Delivery of Supplies

The Purchaser shall not refuse to take delivery of Supplies due to minor defects.

VIII. Defects as to Quality

The Supplier shall be liable for defects as to quality ("Sachmängel", hereinafter referred to as "Defects") as follows:

1. All parts or services where a Defect becomes apparent within the limitation period shall, at the discretion of the Supplier, be repaired, replaced or provided again free of charge, irrespective of the hours of operation elapsed, provided that the reason for the Defect had already existed at the time when the risk passed. The use of the products in Offshore installations is only permitted by separate agreement of the supplier.
2. Claims based on Defects or for Damages are subject to a limitation period of 24 months from the time of passing of the risk. This provision shall not apply where longer periods are prescribed by law according to Sec. 438, Para.1, No.2 (Constructions and Things used for Construction), Sec. 479, Para.1 (Right of Recourse), and Sec. 634a, Para.1, No.2 (Construction Defects) German Civil Code ("BGB") as well as in cases of injury to life, body or health, or where the Supplier intentionally or by gross negligence fails to fulfil his obligation or fraudulently conceals a Defect. The legal provisions regarding suspension of the running of time ("Ablaufhemmung"), hindrance ("Hemmung") and the re-commencement of limitation periods remain unaffected.
3. The warranty rights of the Purchaser require that he has duly met the obligations of examination and notification of defects incumbent upon him under § 377 German Commercial Code (= "Handelsgesetzbuch", "HGB"). The Purchaser shall notify the Supplier of any defects in writing and without undue delay.
4. In the case of the notification of a Defect, the Purchaser may withhold payment to a reasonable extent, taking into account the Defect occurred. The Purchaser, however, may withhold payment only if the subject-matter of the notification of the Defect occurred is justified beyond doubt. Unjustified notifications of Defect shall entitle the Supplier to have his expenses reimbursed by the Purchaser.
5. The Supplier shall first be given the opportunity to complete his performance ("Nacherfüllung") within a reasonable period of time.
6. If completion of performance is unsuccessful, the Purchaser shall be entitled to withdraw from the contract or reduce the remuneration, irrespective of any claims for damages he may have according to Clause XI.
7. There shall be no claims based on Defects in cases of insignificant deviations from the agreed upon quality, of only minor impairment of usefulness, of natural wear and tear or damage arising after the passing of risk from faulty or negligent handling, excessive strain, unsuitable equipment, defective assembly, inappropriate site or from particular external influences not assumed under the contract, or from non-reproducible software errors. Claims based on defects attributable to improper modifications or repair work carried out by the Purchaser or third parties and the consequences thereof shall likewise be excluded.
8. The Purchaser shall have no claim with respect to expenses incurred in the course of completion of performance, including travelling expenses, costs for transport, labour, and material, to the extent that expenses are increased because the corporeal object of the Supplies was subsequently brought to a location other than the Purchaser's place of business, unless by doing so, this complies with the intended use of the Supplies.
9. The Purchaser's Right of Recourse against the Supplier pursuant to Sec. 478 German Civil Code ("BGB") is limited to cases where the Purchaser has not concluded an agreement with his customers exceeding the scope of the statutory provisions governing claims based on Defects. More-over, No.8 above shall apply mutatis mutandis to the scope of the Right of Recourse the Purchaser has against the Supplier pursuant to Sec. 478, Para.2 German Civil Code ("BGB").
10. Furthermore, the provisions of Clause XI (Other Claims for Damages) shall apply in respect of claims for damages. Any other claims of the Purchaser against the Supplier or his agents or any such claims exceeding the claims provided for in Clause VIII, based on a Defect, shall be excluded.
11. The Purchaser alone shall be responsible for the compliance with statutory, official and trade association regulations in the use of our goods.

IX. Industrial Property Rights and Copyright, Defects in Title

1. Unless otherwise agreed, the Supplier shall provide the Supplies free from third parties' industrial property rights and copyrights (hereinafter referred to as "IPR") with respect to the country of the place of destination. If a third party asserts a justified claim against the Purchaser based on an infringement of an

IPR with respect to the Supplies made by the Supplier and then used in conformity with the contract, the Supplier shall be liable to the Purchaser within the time period stipulated in Clause VIII No. 2 as follows:

- a) The Supplier shall choose whether to acquire, at his own expense, the right to use the IPR with respect to the Supplies concerned or whether to modify the Supplies in such a way that they no longer infringe upon the IPR or replace them. If this would be an unreasonable demand upon the Supplier, the Purchaser may rescind the contract or reduce remuneration pursuant to the applicable statutory provisions.
 - b) The Supplier's liability to pay damages shall be governed by Clause XI.
 - c) The above obligations of the Supplier shall apply only if the Purchaser (i) immediately notifies the Supplier of any such claim asserted by the third party in writing, (ii) does not concede the existence of an infringement and (iii) leaves any protective measures and settlement negotiations to the discretion of the Supplier. If the Purchaser stops using the Supplies in order to reduce the damage or for any other good reason, he shall be obliged to point out to the third party that no acknowledgement of the alleged infringement may be inferred from the fact that use has been discontinued.
2. Claims of the Purchaser shall be excluded if he himself is responsible for the infringement of an IPR.
 3. Claims of the Purchaser shall also be excluded if the infringement of the IPR is caused by specifications made by the Purchaser, to a type of use not foreseeable by the Supplier, or to the Supplies being modified by the Purchaser or being used together with products not provided by the Supplier.
 4. In addition, with respect to claims by the Purchaser pursuant to No. 1 a) above, Clause VIII Nos. 4, 5, and 9 shall apply mutatis mutandis in the event of an infringement of an IPR.
 5. Where other Defects in Title occur, Clause VIII shall apply mutatis mutandis.
 6. Any other claims of the Purchaser against the Supplier or his agents or any such claims exceeding the claims provided for in Clause IX, based on a Defect in Title, shall be excluded.

X. Impossibility of Performance, Adaptation of Contract

1. To the extent that the delivery of Supplies is impossible, the Purchaser shall be entitled to claim damages, unless the Supplier is not responsible for the impossibility. The Purchaser's claim for damages shall, however, be limited to an amount of 10% of the value of that part of the Supplies, which, owing to the impossibility, cannot be put to the intended use. This limitation shall not apply in the case of mandatory liability based on intent, gross negligence or injury to life, body or health; this does not imply a change in the burden of proof to the detriment of the Purchaser. The right of the Purchaser to withdraw from the contract shall remain unaffected.
2. Where unforeseeable events within the meaning of Clause IV No.2 substantially change the economic importance or the contents of the Supplies or considerably affect the Supplier's business, the contract shall be adapted, taking into account the principles of reasonableness and good faith. Where doing so is economically unreasonable, the Supplier shall have the right to withdraw from the contract. If the Supplier intends to exercise his right to withdraw from the contract, he shall notify the Purchaser thereof without undue delay after having realised the scope of repercussion; this shall also apply even where an extension of the delivery period had previously been agreed upon with the Purchaser.

XI. Other Claims for Damages

1. Any claims for damages and reimbursement of expenses the Purchaser may have (hereinafter referred to as "Claims for Damages"), irrespective of whatever legal reason, including infringement of duties arising in connection with the contract or tort, shall be excluded.
2. The above shall not apply in the case of mandatory liability, e. g. under the German Product Liability Act ("Produkthaftungsgesetz"), in the case of intent, gross negligence, injury to life, body or health, or breach of a condition substantial to a contractual obligation "wesentliche Vertragspflichten". However, Claims for Damages arising from a breach of a condition substantial to a contractual obligation shall be limited to the foreseeable damage which is intrinsic to the contract, unless caused by intent or gross negligence or based on liability for injury to life, body or health. The above provision does not imply a change in the burden of proof to the detriment of the Purchaser.
3. To the extent that the Purchaser has a valid Claim for Damages according to Clause XI, he shall be barred by lapse of time upon expiration of the limitation period applicable to Defects pursuant to Clause VIII No. 2. In the case of Claims for Damages under the German Product Liability Act, the statutory provisions governing limitation periods shall apply.

XII. Jurisdictional Venue, Applicable Law and Data Protection

1. If the Purchaser is a business person, sole jurisdictional venue for all disputes arising directly or indirectly out of the contract shall be the Supplier's place of business. However, the Supplier may also bring an action at the Purchaser's place of business.
2. German Substantive Law shall govern legal relations existing in connection with this contract, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
3. In accordance with § 33 Federal Data Protection Act (= "Bundesdatenschutzgesetz", "BDSG"), the Purchaser is advised that the Supplier will store his data. The data will be processed in compliance with the provisions of both the Federal Data Protection Act and the Telecommunications Data Protection Act.

XIII. Contractual Validity Clause (Saving Clause)

The legal invalidity of one or more provisions of this contract shall in no way affect the validity of the remaining provisions. This shall not apply if it would be unreasonable for one of the parties to continue the contract.