

General Terms of Delivery and Special regulations for grant of software

of the Wertheim Vertriebs GmbH of 01 January 2006



1. Scope

These general terms and conditions of delivery apply to each and every contract we conclude with any business; by making an offer and/or accepting an offer made by us a purchaser is subject to these terms and conditions. Our general terms and conditions apply unconditionally and to the exclusion of all other terms and conditions; we do not recognise terms and conditions that contradict or depart from our terms and conditions unless we have accorded such terms and conditions our prior written approval. Our general terms and conditions of delivery also apply when we provide our products and services in cognisance of the fact that the purchaser's terms and conditions deviate from or contradict our own general terms and conditions.

2. Conclusion of a contract

- 2.1 A contract shall be deemed to have been concluded when the Vendor sends written confirmation of an order following the receipt of the particular order.
- 2.2 Modifications and amendments to a contract are only valid if they have been confirmed in writing by the Vendor.
- 2.3 If the Purchaser is obliged to provide import and/or export licences or foreign currency permits or similar authorisations for the performance of a contract, the purchaser is to make every reasonable effort to obtain the necessary licences or permits in good time.

3. Drawings and documents

- 3.1 Data regarding weight, dimensions, capacity, price, performance, or the like, contained in catalogues, brochures, circulars, advertisements, pictures and price lists, etc. shall only be definitive if express reference is made to such data in the quote and/or order confirmation.
- 3.2 Any drawings, draft designs, cost estimates and other technical documents that may also constitute part of the quote, and any samples, catalogues, brochures, pictures or similar shall remain the intellectual property of the Vendor at all times. Any utilisation, copying, reproduction, dissemination and transfer to third parties and any publication and presentation thereof may only be effected with the express approval of the owner.

4. Packaging

In the absence of any other arrangements, list prices do not include packaging. If the goods are dispatched in compliance with the Purchaser's wishes they shall be packaged in the standard commercial manner such that the goods will not be damaged under normal transportation conditions on the way to the specified destination. The goods are packaged at the Purchaser's expense and the packaging material will only be taken back if so agreed by the parties.

5. Transfer of risk

Risk with respect to the goods constituting the object of this contract is transferred at the point in time when said goods are made available on the premises of the Vendor's place of business for collection by the customer in accordance with the agreement. If said goods are dispatched to the Purchaser in accordance with the agreement, risk is transferred to the Purchaser at the point in time when the goods leave the Vendor's place of business.

6. Delivery period, legal consequences of delay by either party

- 6.1 In the absence of any other arrangements, the period of delivery shall commence on the latter of the following dates:
 - a) the date of order confirmation;
 - b) the date on which the Purchaser fulfils all prerequisite technical, commercial and financial conditions for which said Purchaser is responsible under the contract;
 - c) the date on which the Vendor receives the advance payment that is due prior to the delivery of the goods, and/or a guarantee of payment has been issued or otherwise provided.
- 6.2 The Vendor shall have the right to make partial or advance deliveries.
- 6.3 In the event that delivery is delayed as a consequence of circumstances over which the Vendor has no control, the period of delivery shall be extended accordingly. In such a case, the Vendor shall only be guilty of a delay in delivery when he fails to fulfil the delivery obligations by the conclusion of the extended period of delivery.
- 6.4 If the Vendor is responsible for a delay in delivery or is unable to execute performance within the extended period accorded under 6.3 above, the Purchaser is permitted either to demand performance or declare his withdrawal from the contract in writing subject to the non-delivery of all the overdue undelivered goods within a specified appropriate subsequent deadline.
- 6.5 The Purchaser may only lodge a claim for loss or damages with respect to a delay on the part of the Vendor to the extent specified under Section 12 below.
- 6.6 Failure to accept delivery: If the Purchaser fails to accept the goods supplied under the contract at the contractually agreed place or at the contractually agreed time, and if the delay is in no way due to an act or failure to act on the part of the Vendor, the Vendor may either demand the fulfilment of the contract or withdraw from the contract subject to a period of grace. If the goods have been set aside, the Vendor may store the goods at the Purchaser's expense and risk. If the goods are not accepted within an appropriate period, the Vendor is entitled to utilise the goods in another manner while still observing the contractual agreement. After the deduction of costs, the earnings for doing so shall be deducted from the Purchaser's debt. The Vendor shall also be entitled to claim reimbursement of all justified expenses incurred by the Vendor in connection with fulfilling the contract that are not covered by the payments received.

7. Prices

- 7.1 Unless otherwise agreed, all prices are ex vendor works, excluding loading.
- 7.2 Prices are based on costs at the time of the price declaration¹, unless otherwise agreed. In the event that costs (particularly wage, energy, material and freight costs) change during the ensuing period prior to delivery, these changes shall be to the benefit or at the expense of the Purchaser respectively.

8. Payment

- 8.1 The payments shall be made in accordance with the agreed terms and conditions of payment.

- 8.2 The Purchaser shall not have the right to withhold payments due to warranty claims or any other counter-claims that the Vendor has not accepted.
- 8.3 If the Purchaser defaults on one of the agreed payments or any other performance, subject to the provision of an appropriate extension of the deadline, the Vendor is entitled either to declare his withdrawal from the contract or continue to insist on fulfilment of the contract and
- a) defer said Vendor's own obligations until the Purchaser has paid the outstanding payments or executed any other performance,
 - b) extend the period of delivery appropriately,
 - c) demand full payment of the outstanding purchase price.
- 8.4 In each case the Vendor is entitled to pursue all claims pursuant to § 1333 ABGB (Austrian Civil Code).
- 8.5 In the event that the Vendor withdraws from the contract, the Purchaser must return the previously delivered goods to the Vendor upon the Vendor's request and compensate him for the reduction in the value of the goods. The Purchaser is also obliged to reimburse the Vendor for all justified expenses that the latter incurred in fulfilling the contract. With respect to the as yet undelivered goods, the Vendor is entitled to make the finished or semi-finished components available to the Purchaser and demand the corresponding proportion of the purchase price. Further claims for loss or damage remain unaffected.
- 9. Retention of title**
- Title to the items sold shall be retained by the Vendor until the Purchaser has met all his payment obligations. The Vendor is entitled to indicate their title on the exterior of the item being sold in a visible manner. In the event of attachment or any other recourse, the Purchaser shall be obliged to assert the Vendor's title and to notify the latter without delay.
- 10. Warranty**
- 10.1 The Vendor is only obliged to fulfil claims under warranty subject to the following provisions. A defect can only be deemed to exist when the utility of the goods specified in this contract is diminished and such diminished utility is attributable to a design, material or production defect. The absence of expressly stipulated characteristics also constitutes a defect. The absence of other characteristics not specified in this clause does not constitute a defect.
- 10.2 The warranty obligation only applies to such defects that are present at the time of risk transfer and/or delivery involving installation following assembly. Claims made under warranty must be lodged with the court within a period of 2 years from this point in time. The period of warranty for electronic parts is 12 months. The provisions under Section 14 of this agreement apply to claims under warranty with respect to software.
- 10.3 The Purchaser may only make claims involving defects with respect to the goods specified under this contract if he notifies the Vendor immediately in writing following the occurrence of the defect. The so-called 'presumption provision' under § 924 ABGB cannot be applied. If in accordance with these provisions the defect is to be rectified by the Vendor, the Vendor so notified can choose whether to:
- a) repair the defective goods on site;
 - b) have the defective goods or the defective parts returned for repair;
 - c) replace the defective parts;
 - d) replace the defective goods.
- 10.4 If the Vendor arranges for the defective goods or parts to be returned to the Vendor for the purpose of reworking or replacement, the Purchaser shall bear the costs and the transportation risk, unless otherwise agreed. The re-shipment of the reworked or replaced goods or parts to the Purchaser shall be at the Vendor's expense and risk, unless otherwise agreed.
- 10.5 The defective goods or parts replaced in accordance with this section shall be at the Vendor's disposal.
- 10.6 The Vendor shall only reimburse the Purchaser for any costs incurred by the latter in remedying a defect themselves, if the Vendor has agreed to do so in writing.
- 10.7 The Vendor's warranty obligation shall only apply to defects occurring under the prescribed operating conditions and during normal usage. The Vendor's obligation shall not apply, in particular, to defects resulting from incorrect installation by the Purchaser or undertaken on the Purchaser's behalf, inadequate maintenance, incompetent repairs or modifications undertaken by persons other than the Vendor or the Vendor's agent without the written agreement of the Vendor, or normal wear.
- 10.8 If the Vendor has obtained parts from subcontracted suppliers prescribed by the Purchaser, the Vendor shall only be liable for those parts of the goods to the extent of the Vendor's own claims under warranty with respect to the subcontracted suppliers. If the Vendor manufactures items on the basis of the Purchaser's design data, drawings or models, the Vendor's liability shall not extend to the accuracy of the design, but to the compliance of the workmanship with the Purchaser's instructions. The Vendor is in no way obliged to check such design specifications, drawings or models with respect to their suitability; neither is he obliged to issue any warning. In cases involving an infringement of protective rights the Purchaser must absolve the Vendor of any obligation for compensation and of all blame.
- 10.9 The Vendor assumes no responsibility when accepting repair orders or for modifications or the reconstruction of old or third party goods, nor for the supply of used goods.
- 10.10 If the Vendor fails to rectify the defect within an appropriate period, the vendor is to allow the Purchaser a reduction in price or withdraw from the contract. In this case the Vendor reimburses the Purchaser the previous payments made one by one in return for the return of previously delivered goods; no interest is charged.
- 10.11 The Vendor is not subject to any warranty obligations other than those set out in Section 10 of this contract; any further statutory claims made by the purchaser are to be waived by common consent. Provision is made for claims for loss and damages on the part of the Purchaser as a result of defective goods in Section 11 of this contract.

11. Liability

- 11.1 Any liability on the part of the Vendor with respect to the Purchaser for damages resulting from non-blattant gross negligence or minor negligence, regardless of whether such damages are due to conduct in breach of contract or to tortious acts, including liability for indirect damages, is hereby precluded by mutual consent. The Vendor is only responsible if the Vendor or persons whom the Vendor must guarantee are at least guilty of blatant gross negligence. In particular, this preclusion of liability encompasses consequential damages and damages suffered by the Purchaser as a result of claims made against him from third parties. The Purchaser shall protect himself against such claims by taking out adequate insurance cover. The Vendor assumes no contractual liability whatsoever with respect to third parties. Personal injuries are not encompassed by this waiving of liability.
- 11.2 The purchased item provides only that level of safety that may be expected on the basis of the approval provisions, operating instructions, Vendor's instructions on the treatment of the purchased item - especially with regard to any prescribed inspections - and other instructions given.
- 11.3 Claims for compensation for damages as a result of the defective execution of goods or services that are themselves related to damages resulting from the defect must be lodged with a court within 12 months of the conclusion of the warranty period specified in the contract, otherwise the right to lodge such claims expires.
- 11.4 The reversal of the burden of proof pursuant to § 1298 of the Austrian Civil Law Code is excluded.

12. Data protection

- 12.1 The Purchaser accepts that the Vendor shall save, transmit, process and delete data belonging to the Purchaser during the course of business transactions.
- 12.2 The parties undertake not to disclose any information obtained during the course of their business relationship whatsoever to any third parties.

13. Jurisdiction, applicable law, place of performance

- 13.1 The venue for all disputes arising directly or indirectly from the contract shall be the relevant Austrian court with jurisdiction for the Vendor's principal place of business. However, the Vendor may also seek redress in the court of jurisdiction for the Purchaser.
- 13.2 The contract is subject to Austrian law to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980, Federal Law Gazette No. 1988/96.
- 13.3 The place of performance for deliveries and payments shall be the Vendor's principal place of business, even if delivery occurs elsewhere as agreed.

14. Special provisions for the provision of software

- 14.1 These special provisions governing the provision of software apply in addition to the terms and conditions of supply if the Wertheim customer acquires the right to use Wertheim License Programs. The general terms and conditions shall only apply if the special provisions do not contain any provisions at variance to the former.

14.2

- a) By purchasing a Wertheim License Program the customer receives from Wertheim a limited, non-exclusive right of use for the leased software, the Wertheim License Program. Unless otherwise agreed this right of use remains in force indefinitely.
- b) The extent of the right of use is governed by a contract concluded with the customer and pursuant to the terms and conditions of supply. All rights not expressly granted in the Agreement of Use remain with Wertheim Vertriebs GmbH. Therefore, Wertheim Vertriebs GmbH retains exclusive title to all programs and the related documentation, even after they have been made available to the customer.
- c) In the absence of any contrary agreement in the contract, the Wertheim License Program may be installed, operated and used only on a stand-alone basis, i.e. at one place of business per issued license. The parallel use of the program(s) at another location, e.g. within a network extending beyond the place of business, is expressly prohibited unless otherwise agreed.

14.3

- a) Without the written approval of Wertheim, the customer is not entitled
- to make copies of the Wertheim License Program or the related material. However, the customer may make a backup copy that has to be clearly identified as such, the retention, safety and security of which is the customer's responsibility.
 - to sell, rent or make available in any other way Wertheim License Programs to third persons free of charge or for a fee.
- b) Wertheim License Programs must not be modified, decompiled nor disassembled. Neither the customer nor third parties are permitted to interfere with the Wertheim License Program. Furthermore, data may only be altered using the programs provided by Wertheim.
- c) Pecuniary loss or damages suffered by the customer or a third party (e.g. safe holders) resulting directly or indirectly from modifications to the program or to data, made either by the customer or a third party in contravention of this provision, are the sole responsibility of the customer or the third party and no claims can be brought against Wertheim. If Wertheim is responsible or partially responsible for the loss or damages or the prevention of such, exemption from liability takes effect pursuant to Section 14.7 of these conditions.

14.4

- If the customer acts in breach of an essential obligation assumed by virtue of this contract, Wertheim is authorised to withdraw the right of use of the Wertheim License Program with immediate effect and the customer is not entitled to make any claims - in particular with respect to the reimbursement of the paid purchase price. In particular, the obligations set forth under Sections 14.2 c), 14.3 a) and 14.3 b) are essential contractual obligations.

14.5

- If the customer infringes the obligations set out in Sections 14.2 c), 14.3 a) and 14.3 b), they are committed to pay a contractual penalty of € 10.000,- (in words: ten thousand Euro) for each infringement, even in the absence of liability, loss or damages.

14.6

- a) A defect under the terms of the warranty may only be claimed if the program does not demonstrate the performance promised to the customer in the contract or does not comply with the program specifications at the date of installation on the customer's premises. Defects that are not present at this time, but only arise later do not entitle one to lodge justified claims under the warranty. Defects resulting from operator error, physical influences or the use of the Wertheim License Program in non-compliance with this contract are excluded from the warranty obligations. The same applies to defects caused by inappropriate hardware or hardware not approved by Wertheim.
- b) In order to check whether the Wertheim License Program is fault-free, the customer is obliged to perform a functional test of the program in accordance with Wertheim instructions after the program has been installed. Faults arising during the functional test must be recorded immediately in writing on the customer installation certificate, otherwise these faults cannot be claimed under warranty. Wertheim must be notified of any subsequent faults in writing within 3 days of their detection, otherwise no claim can be made under warranty.
- c) Wertheim shall fulfil its warranty obligations by taking corrective action to rectify the established fault. Corrective action with respect to a fault implies that the fault can be reproduced in the current customer version of the Wertheim License Program retained by Wertheim. The customer is obliged to provide Wertheim with all requisite documents, information or data to make this reproducibility possible.
- d) Fault rectification is undertaken by Wertheim primarily by telephone during office hours or by sending enhancements on data media. If it is not possible to eliminate the fault in this way, Wertheim shall offer the customer a binding proposal to rectify the fault.

- e) If the fault cannot be rectified, Wertheim shall grant the customer an appropriate price reduction. If the fault is so serious that it makes use of the Wertheim License Program in accordance with the provisions impossible, Wertheim or the customer can withdraw from the License Program Contract. Any contracts with respect to other programs or hardware shall remain unaffected and in full force.
 - f) In the event that Wertheim is responsible for the existence of the fault or for the failure to rectify the fault, reference is made to the exclusion of liability under Section 14.7 of these conditions.
 - g) The warranty period is 6 months, commencing at the time of the installation of the program at the customer's premises.
 - h) Wertheim shall assume no liability whatsoever in the event that a Wertheim License Program is altered by the customer or by any third party without the consent of Wertheim.
- 14.7** Any liability on the part of Wertheim for damages resulting from non-blatant gross negligence or minor negligence, regardless of whether such damages are due to conduct in breach of contract or to tortious acts, including liability for indirect damages, is hereby precluded by mutual consent. Wertheim itself or any individual for whom Wertheim acts as a guarantor, can only be held responsible in case of gross negligence. This exemption from liability includes in particular consequential damage and damage the customer suffers in the event that a third party (e.g. safe holder) asserts claims against them. The customer shall protect himself against such claims by adequate insurance coverage. Wertheim assumes no contractual liability with respect to third parties. Express reference is made to the fact that Wertheim shall in no way be held responsible for such damage or loss attributable to the customer, whether culpably or through no fault of their own (e.g. loss of data due to inadequate data security), or by third parties (e.g. destruction of data by virus programs).