

General Terms and Conditions of Delivery of Werner Wirth GmbH



1. Application

- 1.1 All services, in particular deliveries of work, work performance, sales, services, etc., as well as offers of Werner Wirth GmbH (hereinafter referred to as „WERNER WIRTH“) shall be performed exclusively on the basis of these terms and conditions. They are integral part of all contracts between WERNER WIRTH and the contractual partners of WERNER WIRTH (hereinafter: „Customer“). They shall also apply to all future services or offers to the Customer by WERNER WIRTH, even if they are not separately agreed upon again.
- 1.2 The terms and conditions of the customer or third parties do not apply, even if WERNER WIRTH does not explicitly refuse their validity. Even if WERNER WIRTH refers to texts that contain or refer to other terms and conditions of business, this or the service provided by WERNER WIRTH does not constitute an agreement with the validity of those terms and conditions of business.
- 1.3 Excluded from the validity of these Terms of delivery are payments made by WERNER WIRTH for goods and services; in this regard, the general terms of purchase of WERNER WIRTH shall apply.

2. Conclusion of contract

- 2.1 The customer's order shall be deemed an offer within the meaning of § 145 BGB (German Civil Code). With the confirmation WERNER WIRTH accepts the contract, in accordance to § 151 BGB.
- 2.2 All offers from WERNER WIRTH are nonbinding, unless they are expressly marked as binding or contain a specific period of acceptance.
- 2.3 Exclusively decisive for the relationship between WERNER WIRTH and the Customer is the contract concluded in text form, including these Terms of Delivery. Any oral agreements or promises made before or after the conclusion of the contract shall be replaced by the contract in text form, unless it is expressly stated that they shall continue to be binding.
- 2.4 Supplements and amendments to the agreements made, including these terms and conditions of delivery, must be in text form to be effective
- 2.5 WERNER WIRTH reserves the right of ownership and/or copyright of all offers, cost estimates and other information provided by WERNER WIRTH during the initiation of the contract as well as drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and aids provided to the Customer. The Customer may not, without the express consent of WERNER WIRTH, make these available to third parties, either as such or in terms of their content, publish them, use them himself or through third parties or reproduce them. At the

request of WERNER WIRTH, the Customer shall return these documents or items in full to WERNER WIRTH and destroy any copies that may have been made if they are no longer needed by the Customer in the ordinary course of business or if negotiations do not lead to the conclusion of a contract. Excluded from this is the storage of electronically provided data for the purpose of normal data backup.

3. Performance

- 3.1 Any descriptions of the performance of WERNER WIRTH, in particular with regard to weight, dimensions, utility values, loading capacity, tolerances and technical data as well as representations thereof, in particular drawings, sketches and illustrations are only approximately definitive, unless the usability for the contractually intended purpose requires exact conformity. They are not guaranteed characteristics of quality, but descriptions or identifications of the performance itself. Deviations customary in the trade and deviations which are due to legal regulations or represent technical improvements, as well as the replacement of components or materials by equivalent components are permissible, provided that they do not impair the usability for the contractually intended purpose.
- 3.2 Deliveries are made ex warehouse. The place of performance is the location of the branch office of WERNER WIRTH, unless otherwise specified. If WERNER WIRTH is also responsible for installation, the place of performance shall be the place where the installation is to take place.
- 3.3 If WERNER WIRTH takes over the shipment, contrary to Section 3.2 herein, WERNER WIRTH shall determine the mode of shipment and packaging at its own discretion, unless the parties have agreed otherwise.

4. Delivery and time of delivery

- 4.1 If the shipment of goods has been agreed, delivery periods and delivery dates refer to the time of handing over the goods to the forwarding agent, carrier or other third party commissioned with the transport, if the contracting parties have not expressly agreed to the time of arrival at the customer.
- 4.2 Von WERNER WIRTH in Aussicht gestellte Fristen und Termine für Lieferungen und Leistungen gelten stets nur annähernd, es sei denn, dass ausdrücklich eine feste Frist oder ein fester Termin zugesagt wurde oder vereinbart ist.
- 4.3 WERNER WIRTH is not liable for impossibility of delivery or for delays, as far as these are caused by force majeure or other events not foreseeable at the time of the conclusion of the contract (e.g. externally caused operational disruptions of any kind, difficulties in procuring materials or energy, pandemics, transport delays, strikes, lawful lock-outs, shortage of labor, energy or raw materials, difficulties

in procuring necessary official permits, official measures or the failure to receive, incorrect or untimely delivery from suppliers), unless WERNER WIRTH is responsible for the circumstance. If performance is delayed as a result, the originally agreed delivery time shall be extended, unless a later delivery is unreasonable for the Customer. This shall be assumed in particular if the service would be worthless for him. In this case the customer is entitled to withdraw from the contract by immediate written declaration. If the abovementioned events make the service considerably more difficult or impossible and the hindrance is not only of temporary duration, WERNER WIRTH is entitled to withdraw from the contract.

4.4 If WERNER WIRTH is in default with a delivery or service or if a delivery or service becomes impossible, for whatever reason, the liability of WERNER WIRTH shall be limited to damages in accordance with clauses 8, 9 of these Terms of Delivery.

4.5 WERNER WIRTH will only insure the object of performance against theft, breakage, transport, fire and water damage or other insurable risks at the express request of the Customer and at his expense.

5. Consideration

5.1 The prices according to the order confirmations for the services described therein do apply. Additional or special services will be charged separately. The prices are in EUR ex warehouse. If no prices have been explicitly agreed upon, the list prices of WERNER WIRTH in the version valid at the time of the conclusion of the contract shall apply. Statutory value added tax, customs duties for export deliveries as well as fees and other public charges are not included in the prices of WERNER WIRTH; they are shown separately on the invoice on the day of invoicing.

5.2 The invoice amounts are to be paid within 30 days without any deductions by bank transfer to WERNER WIRTH, unless otherwise agreed in writing. The statutory provisions shall apply in the event of default.

5.3 The customer may only declare the set-off or retention with undisputed or legally binding claims or if the counterclaim arises from the same contractual relationship of the service concerned.

5.4 If, after conclusion of the contract, WERNER WIRTH becomes aware of circumstances which are likely to significantly reduce the creditworthiness of the Customer and which endanger the payment of outstanding claims of WERNER WIRTH by the Customer from the respective contractual relationship (including from other individual orders to which the same framework agreement applies), WERNER WIRTH shall be entitled to perform outstanding deliveries or services only against advance payment or provision of security.

5.5 Price changes through WERNER WIRTH are allowed in reasonable relation, as far as wages or material costs are increasing until the production of the delivery and if there are more than 8 weeks between the signing of the contract and the agreed delivery date. The price modification

must be in accordance with the cost increase; WERNER WIRTH must provide evidence of this on request. The customer is only entitled to withdraw from the contract if the price increase exceeds the increase of the general cost of living between ordering and delivery not only insignificantly. An increase as aforesaid shall be excluded to the extent that the increase in the cost of any of the above factors is offset by a reduction in the cost of any other of the above factors in relation to the total cost charge for the supply.

5.6 The deduction of a discount requires a special written agreement.

6. Transition of risk

6.1 The Customer assumes the risk of deterioration and destruction at the latest when the delivery item is handed over to the forwarding agent, carrier or other third party designated to carry out the shipment. The beginning of the loading process shall be decisive. This shall also apply if partial deliveries are made or if WERNER WIRTH has taken over other services, such as shipping or installation. If the shipment or handover is delayed due to circumstances caused by the Customer, the risk shall pass to the Customer on the day the delivery item is ready for shipment and the MMS has notified the Customer of this.

6.2 The customer shall bear the storage costs after the transfer of risk. In case of storage by WERNER WIRTH, the storage costs amount to 0.5% of the invoice amount of the delivery items to be stored per week. We reserve the right to assert and prove further or lower storage costs.

7. Acceptance

Insofar as acceptance is to take place, the object of performance shall be deemed accepted if

- the installation has been completed, if WERNER WIRTH also owes the installation,
- WERNER WIRTH has notified the Customer of this with reference to the fiction of acceptance according to this Section 7 and has requested the Customer to accept the goods,
- five working days have elapsed since delivery or installation or since the customer has started using the object of performance and
- the Customer has failed to accept within this period of time for any other reason than a defect notified to WERNER WIRTH, which makes the use of the object of service impossible or significantly impairs it.

8. Cooperation of the customer

8.1 The Client is aware that the performance of contractual services, in particular the compliance with delivery deadlines by WERNER WIRTH regularly requires the fulfillment of obligations to cooperate, especially if the performance of WERNER WIRTH is preceded by a product development process. Against this background, obligations to cooperate are activities of the Customer that are necessary or beneficial to the product development or performance of WERNER WIRTH, such as, in particular, the provision of technical information, sample products, templates, expected product characteristics, etc. WERNER WIRTH is

obliged to inform the Customer of its obligations to cooperate as early as possible, but in any case in time.

8.2 If the Customer violates obligations to cooperate, he cannot assert any contractual claims for defects against WERNER WIRTH, unless the violation of the obligation is insignificant or has only an insignificant effect. If WERNER WIRTH suffers damage due to a breach of obligation, the Customer shall be obliged to pay compensation to WERNER WIRTH.

8.3 WERNER WIRTH may, without prejudice to the rights arising from default of the Customer, demand an extension of delivery and service deadlines or a postponement of delivery and service dates from the Customer for the period of time in which the Customer does not fulfill its contractual obligations and duties towards WERNER WIRTH.

9. Partial performance

9.1 WERNER WIRTH is only entitled to make partial deliveries if the partial delivery can be used by the Customer within the scope of the contractual purpose, if the delivery of the remaining ordered goods is ensured and if the Customer does not incur any significant additional work or additional costs as a result, unless WERNER WIRTH declares itself willing to bear these costs.

10. Liability for faults

10.1 The warranty period is one year from delivery or, if acceptance is required, from acceptance. Claims for damages of the Customer arising from injury to life, body or health or from intentional or grossly negligent breaches of duty by WERNER WIRTH or its vicarious agents, which are subject to the statute of limitations according to the legal regulations, remain unaffected.

10.2 Objects of performance shall be carefully examined immediately after delivery to the customer or to a third party designated by the customer. § 377 et seq. of the HGB (German Commercial Code) shall apply, unless otherwise specified in these terms of delivery. If a defect becomes apparent during the obligatory inspection (open defects) or later, which could not be detected during the inspection (hidden defects), the Customer shall notify WERNER WIRTH immediately in writing. If a technical inspection is required for the inspection, the Customer shall carry it out properly and without delay at its own expense. If the defect was already obvious at an earlier point in time during normal use, this earlier point in time shall, however, be decisive for the start of the complaint period.

10.3 If requested by WERNER WIRTH, the object of the service that is the subject of the complaint must be returned to WERNER WIRTH carriage paid. In the event of a justified notice of defect, WERNER WIRTH shall reimburse the costs of the cheapest shipping route; this shall not apply if the costs increase because the Object of Service is located at a place other than the place of intended use.

10.4 In the event of material defects of the subjects of performance, WERNER WIRTH shall be obliged and entitled to choose within a reasonable period of time between repair

or replacement. In case of failure, i.e. impossibility, unreasonableness, refusal or unreasonable delay of the repair or replacement delivery, Customer may withdraw from the contract or reduce the consideration appropriately.

10.5 If a defect is due to the fault of WERNER WIRTH, the Customer may claim damages under the conditions set out in this clause 10.

10.6 In case of defects of components of other manufacturers, which WERNER WIRTH cannot remove for reasons of license law or factual reasons, WERNER WIRTH shall, at its option, either assert its warranty claims against the manufacturers and suppliers for the account and on behalf of the Customer or assign them to the Customer. Warranty claims against WERNER WIRTH exist for such defects under the other conditions and in accordance with these Terms of Delivery only if the legal enforcement of the above mentioned claims against the manufacturer and supplier was unsuccessful or, for example due to insolvency, is futile. For the duration of the legal dispute, the statute of limitations of the Customer's warranty claims against WERNER WIRTH is suspended.

10.7 Warranty shall not apply if the Customer modifies the delivered item or has it modified by third parties without the consent of WERNER WIRTH and the remedy of the defect becomes impossible or unreasonably difficult. In any case, the Customer shall bear the additional costs of remedying the defect resulting from the modification.

10.8 Any delivery of used objects agreed with the customer in individual cases shall be effected to the exclusion of any warranty for material defects.

10.9 Agreements on the quality and availability of the delivered item shall only be deemed a guarantee if they are expressly designated as such.

11. Further liability

11.1 The liability of WERNER WIRTH, its organs, legal representatives, employees and other vicarious agents for damages, for whatever legal reason, in particular due to impossibility, delay, defective or wrong delivery, breach of contract, breach of duties during contract negotiations and tort is limited as follows, insofar as fault is involved in each case.

11.2 WERNER WIRTH shall not be liable in case of simple negligence of its organs, legal representatives, employees or other vicarious agents, as far as it is not a violation of essential contractual obligations. Essential contractual obligations include in particular the obligation to deliver and, if applicable, install the delivered item in a timely manner, its freedom from defects of title and such material defects that impair its functionality or usability more than just insignificantly, as well as consulting, protection and care obligations that are intended to enable the Customer to use the delivered item in accordance with the contract or to protect the life or limb of the Customer's personnel or to protect its property from significant damage.

11.3 If WERNER WIRTH is liable for damages on the merits, this liability shall be limited to damages that WERNER WIRTH foresaw at the time of the conclusion of the contract as a possible consequence of a breach of contract or that it should have foreseen when applying the usual care. Indirect damages and consequential damages resulting from defects of the delivery item are only eligible for compensation if such damages are typically to be expected when the delivery item is used as intended. The same applies to claims for reimbursement of expenses.

11.4 Insofar as WERNER WIRTH provides technical information or acts in an advisory capacity and this information or advice is not part of the contractually agreed scope of services owed by WERNER WIRTH, this shall be free of charge and under exclusion of any liability.

11.5 The limitations of this clause 11 do not apply to the liability of WERNER WIRTH for intentional conduct, for guaranteed characteristics, for injury to life, body or health or under the German Product Liability Act.

12. IP rights

12.1 WERNER WIRTH warrants that the subject of performance is free from industrial/intellectual property rights or copyrights (IP rights) of third parties. Each contractual partner shall notify the other contractual partner immediately in text form if claims are asserted against it due to the infringement of such rights.

12.2 If the subject matter of the Agreement nevertheless infringes an IP right or copyright of a third party, WERNER WIRTH shall, at its discretion and at its expense, either modify or replace the subject matter of the Agreement in such a way that no rights of third parties are infringed, but the subject matter of the Agreement continues to perform the contractually agreed functions, or procure the right of use for the Customer by concluding a license agreement with the third party. If WERNER WIRTH does not succeed in doing so within a reasonable period of time, Customer shall be entitled to withdraw from the contract or to reduce the consideration appropriately. Any claims for damages by Customer shall be subject to the limitations of these Terms of Delivery.

12.3 If claims are made against the Customer by third parties due to infringements of IP rights for which WERNER WIRTH is responsible, the Customer may only have recourse to WERNER WIRTH if the Customer informs WERNER WIRTH immediately of any asserted infringements of rights, the Customer supports WERNER WIRTH to a reasonable extent in defending the asserted claims or enables us to carry out the aforementioned modification measures, all defensive measures including out-of-court settlements are reserved to WERNER WIRTH, the defect of title is not based on an instruction of the Customer and the violation of rights was not condemned by the fact that the Customer has modified the delivery item without authorization or used it in a manner not in accordance with the contract.

12.4 In case of infringement of rights by products of other manufacturers delivered by WERNER WIRTH, WERNER WIRTH shall, at its option, either assert its claims against

the manufacturers and sub-suppliers for the Customer's account or assign them to the Customer. Claims against WERNER WIRTH shall only exist in these cases in accordance with this clause if the legal enforcement of the above mentioned claims against the manufacturers and suppliers was unsuccessful or, for example due to insolvency, is futile.

13. Reservation of title

13.1 The subjects of performance delivered by WERNER WIRTH to the Customer shall remain the property of WERNER WIRTH until full payment of all secured claims.

13.2 After the handover/delivery, Customer shall store the subjects of performance free of charge for WERNER WIRTH until ownership is transferred. The Customer undertakes to treat the Items of Service with care; in particular, the Customer undertakes to insure them sufficiently at its own expense against fire, water and theft damage at replacement value. If maintenance and inspection work is necessary, the customer must carry this out in good time at his own expense.

13.3 The customer shall be entitled to process and sell the subjects of performance in the ordinary course of business until such time as they are disposed of. Pledging and transfer by way of security are excluded.

13.4 In the event that the Customer processes the Merchandise, it is agreed that the processing is carried out in the name and for the account of WERNER WIRTH as the manufacturer and that WERNER WIRTH directly acquires ownership or - if the processing is carried out using materials from several owners or the value of the processed item is higher than the value of the Merchandise - co-ownership (fractional ownership) of the newly created item in the ratio of the value of the Merchandise to the value of the newly created item. If no such acquisition of ownership should occur at WERNER WIRTH, Customer hereby assigns its future ownership or co-ownership of the newly created item to WERNER WIRTH as security. If the subjects of performance are combined or inseparably mixed with other objects to form a uniform object and if one of the other objects is to be regarded as the main object, then WERNER WIRTH, insofar as the main object belongs to WERNER WIRTH, shall transfer to Customer proportionate co-ownership of the uniform object in the aforementioned ratio. The items created by processing or mixing, which are (co-)owned by WERNER WIRTH, shall be kept by Customer in accordance with Section 13.2.

13.5 In the event of resale of the Items of Service, Customer hereby assigns by way of security to WERNER WIRTH the resulting claim including VAT against the purchaser or, in the event of co-ownership by WERNER WIRTH of the Items of Service, in proportion to the co-ownership share of WERNER WIRTH. The same shall apply to other claims that take the place of the subject matter of the contract or otherwise arise with respect to the subject matter of the contract, such as insurance claims or claims in tort in case of loss or destruction. WERNER WIRTH revocably authorizes the Customer to collect the claims assigned to WERNER WIRTH in its own name. WERNER WIRTH may only

revoke this direct debit authorization in the event of utilization. WERNER WIRTH shall only assert the claim in case of insolvency of the Customer or in case of default of payment itself; in this case WERNER WIRTH can demand from the Customer to notify the debtor of the assignment and to hand over all sales documents.

13.6 If third parties access the contractual items, in particular through seizure, Customer shall immediately inform them of the ownership of WERNER WIRTH and inform WERNER WIRTH of this in order to enable the enforcement of the ownership rights. If the third party is not able to reimburse WERNER WIRTH for the court or out-of-court costs incurred in this context, the Customer shall be liable to WERNER WIRTH.

13.7 WERNER WIRTH will release the contractual objects as well as the objects or claims taking their place if their value exceeds the amount of the secured claims by more than 50%. The selection of the objects to be released thereafter is up to WERNER WIRTH.

13.8 If WERNER WIRTH withdraws from the contract in case of breach of contract by the Customer, especially in case of default of payment, WERNER WIRTH is entitled to demand the return of the contractual items.

14. Statute of limitations

14.1 Regardless of the legal grounds, any claims of the Customer shall become statute-barred twelve months after the transfer of risk or, if a defect only becomes apparent at a later date, from knowledge of the defect, unless the Customer would have been able to detect the defect earlier in the event of proper inspection of the subjects of performance; in this case, the twelve-month period of limitation shall commence from the date from which the defect would have been detected in the event of proper inspection. Deviating from this, the statutory periods shall apply for intent or fraudulent intent and for claims under the Product Liability Act.

14.2 The limitation period in the case of a delivery recourse according to §§ 478, 479 BGB (German Civil Code) remains unaffected.

15. Confidentiality

15.1 All documents and information which the contracting parties make available to each other during the initiation of the contract and during the ongoing contractual relationship, whether intentionally or unintentionally, orally or in text form, must be kept secret from third parties, even for a period of five years after termination of the contract. This applies in particular to offer documents, prices for services, samples, construction plans, technical sketches, specimens and test results.

15.2 If a legitimate interest exists, the contracting parties may pass on information and documents to tax advisors and legal advisors, provided that they are obliged to maintain secrecy upon being called upon to do so. The obligation to maintain secrecy shall only expire if and to the extent that the knowledge contained in the documents provided has become generally known or the contracting party explicitly consents thereto.

16. Final provisions

16.1 If the Customer is a merchant, a legal entity under public law or a special fund under public law, or if the Customer has no general place of jurisdiction in the Federal Republic of Germany, the place of jurisdiction for all possible disputes arising from the business relationship between WERNER WIRTH and the Customer shall be, at the option of WERNER WIRTH, Hamburg or the registered office of the Customer. However, in these cases, Hamburg shall be the exclusive place of jurisdiction for legal actions against WERNER WIRTH. Mandatory legal provisions regarding exclusive jurisdiction remain unaffected by this provision.

16.2 WERNER WIRTH shall make legally binding declarations exclusively in German unless otherwise expressly agreed. Statements in other languages are only non-binding explanations.

16.3 The relationship between WERNER WIRTH and the Customer is exclusively subject to the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods of 11.04.1980 (CISG) shall not apply.

16.4 In the event of a dispute, recourse to arbitration tribunals requires an explicit agreement between the contracting parties in text form. Arbitration clauses or agreements of any kind are not valid either by implication or by the customer's general terms and conditions.

16.5 Insofar as the contract or these Terms and Conditions of Delivery contain loopholes, those legally effective provisions shall be deemed agreed to fill these loopholes which the contracting parties would have agreed to in accordance with the economic objectives of the contract and the purpose of these Terms and Conditions of Delivery if they had been aware of the loophole.