

General terms and conditions for W.E.St. Elektronik GmbH (hereinafter known as supplier)

I. General

1. These general terms and conditions apply exclusively for all legal relations between the supplier and purchaser (only businesspeople, not private individuals) regarding the supplier's deliveries and/or services (hereinafter: deliveries). Purchaser terms and conditions only apply insofar as the supplier has expressly consented to these in writing.
2. A contract only eventuates through a written order confirmation from the supplier. Quotes submitted beforehand, and verbal promises made by the supplier prior to contract conclusion, are non-binding.
3. The supplier unconditionally reserves all proprietary and copyright use rights to cost quotations, diagrams and other documents, including in electronic form (hereinafter: documents). The documents may only be forwarded to third parties with the supplier's prior consent and must be returned immediately to the supplier at its request if it is not awarded the contract. Clauses 1 and 2 apply accordingly for purchaser documents, though these may be forwarded to third parties who have been authorised to handle deliveries.
4. The purchaser is granted a non-exclusive right to use unmodified standard software and firmware displaying the agreed service features on the agreed devices. The purchaser may create a back-up copy of the standard software without an express agreement. Manufacturer information – particularly copyright details – may not be modified or deleted without the supplier's express consent.
5. Partial deliveries are permitted, insofar as this is feasible for the purchaser.
6. The term "compensation claims" in these general terms and conditions also includes compensation claims for futile expenses.

II. Prices, payment conditions and offsetting

1. The prices are ex works in Niederkrüchten, excluding packaging, plus the legal sales tax.
2. All transfer fees must be borne by the purchaser.
3. The purchaser is only entitled to withhold payments or offset them against counterclaims if these are undisputed or have been legally established.
4. According to § 321 of the German Civil Code, the supplier can refuse to provide a service if, after contract conclusion, it becomes apparent that its claim for return services is at risk due to the purchaser's inability to pay (e.g. if bankruptcy is filed for). The right to refuse services ceases to apply if the return service is provided or guaranteed by a security deposit. The supplier can set an appropriate deadline for the purchaser to, at its discretion, either provide a return service in exchange for the supplier's service, or provide a security deposit. The supplier can withdraw from the contract if the deadline elapses unsuccessfully. § 323 applies accordingly.

III. Retention of title

1. Delivery items remain the supplier's property until all payments from the delivery contract have been received.
2. While the retention of title is in effect, the purchaser may not pledge the delivery item or assign it as collateral. Resellers can only resell it as part of their usual business operations, provided they have received payment from their customers, or make the proviso that ownership is only transferred to the customer once the customer has met its payment obligations.
3. The purchaser must immediately inform the supplier in the event of seizures, confiscations or other orders by third parties.
4. If the purchaser breaches the contract in any way, particularly in the form of payment default, the supplier is entitled to retract the goods and withdraw from the contract. An appropriate extension period set for the purchaser must have elapsed unsuccessfully in order for this to happen. This does not affect the legal provisions regarding the dispensability of a deadline. The purchaser is obliged to return the goods. If the supplier retracts, asserts its retention of title over, or seizes the delivery item, this does not imply a withdrawal from the contract, unless the supplier has expressly stated this.

IV. Delivery deadlines; Default

1. Delivery deadlines are only binding if they have been agreed on in writing between the parties.
2. Adherence to delivery deadlines requires that all technical and commercial issues between the supplier and purchaser be clarified, that all documents, necessary permits and approvals (particularly for plans) to be provided by the purchaser be submitted promptly, and that other obligations, e.g. meeting the agreement payment conditions, be met. If this is not the case, the deadlines are extended accordingly; this does not apply if the supplier is responsible for the delay.
3. If deadlines are not met due to force majeure or similar events, such as labour disputes, over which the supplier has no control, the deadlines are extended accordingly. The same applies in the event the supplier does not make its deliveries promptly or correctly.
4. If the supplier falls into default, the purchaser can – insofar as it credibly shows that it has suffered damages as a result – demand a compensation, for every completed week of delay, of 0.5%, but no more than 5% of the price for the part of the delivery which could not be made as per the contract due to the delay.
5. Insofar as purchaser compensation claims for delivery delays, as well as compensation claims in lieu of performance, which extend beyond the limits stated in point 3 are excluded in all cases of delayed delivery, even after delivery deadlines set for the supplier have elapsed. This does not apply insofar as liability may not by statute be lawfully excluded in cases of delayed delivery, gross negligence, death, physical injury, or harm to health. The purchaser can only legally withdraw from the contract if the supplier is responsible for the delivery delay. The rules above do not involve a change in the onus of proof to the purchaser's detriment.
6. The purchaser commits, at the supplier's request, to declare, within an appropriate time frame, whether or not it will be exercising its withdrawal right as a result of the delay, or will be insisting on delivery.
7. If the purchaser requests for shipment/delivery to be delayed by more than one month after notification that the goods are ready for dispatch, the purchaser can be charged a storage fee of 0.5% of the price of the delivery items, but no more than a total of 5%, for every further commenced month. The contractual parties are entitled to prove higher or lower storage costs.

V. Transfer of risk, Acceptance

1. Risk for deliveries is transferred to the purchaser once the deliveries have left the factory, been handed over to a shipping company or freight forwarder, or been collected. This also applies for partial deliveries. At the purchaser's request and expense, the supplier insures the deliveries against the usual transport risks;
2. If handover at the purchaser's own premises, shipment/delivery is delayed for reasons caused by the purchaser, or if the purchaser delays acceptance for other reasons, the risk is transferred to the purchaser.
3. The purchaser cannot refuse to accept the deliveries for insignificant defects.

VI. Material defects

1. Purchaser complaints must be reported in writing immediately
2. All defects parts or services must, at the supplier's discretion, be either repaired or replaced, insofar as the cause of the defect existed at the time the risk was transferred.
3. Direct costs for repairs/replacement delivery including shipment are borne by the supplier. The supplier only bears the costs for dismantling and refitting in the event of repairs.
4. Claims for supplementary performance are time-barred 12 months after the legal commencement date of the statute of limitations; the same applies for withdrawal and reduction. The legal regulations on expiry suspension, and suspension and recommencement of deadlines are not affected by this.
5. In the event of complaints, the purchaser must withhold payments up to an amount appropriate for the defects. The purchaser can only withhold payments if a fully justified complaint is lodged. The purchaser is not entitled to a withholding right if its claims have expired. If unjustified complaints are made, the purchaser must reimburse the supplier for the expenses the latter incurs.
6. The supplier must be given an opportunity for supplementary performance within an appropriate time frame; otherwise, the supplier is exempt from its liability for the resulting consequences. Only in urgent cases, e.g. to defend larger damages or when operational safety is at risk, is the purchaser entitled to repair the defect itself or through third parties. Costs incurred from this must be borne by the supplier.
7. If the supplementary performance fails, the purchaser can – irrespective of any compensation claims as per point 10 – withdraw from the contract or reduce the remuneration.

8. No liability is assumed for damages caused by:
- insignificant deviation from the agreed quality
 - an insignificant impact on useability
 - natural wear and tear
 - incorrect or negligent actions by the purchaser or third parties
 - excessive use
 - use of unsuitable materials
 - particular external influences not required under the contract
 - irreproducible software errors.

The supplier is not liable for wear parts.

If the purchaser or a third party incorrectly perform changes or repair work on the delivery item without the supplier's prior consent, the supplier is not liable for these or the resulting consequences. The additional repair costs caused by the change must be borne by the purchaser.

9. Purchaser claims for expenses required for the supplementary performance, particularly transportation, commuting, labour and material costs, are excluded, insofar as these increase because the delivery item has been subsequently taken to a place other than the purchaser's premises, unless this relocation is in accordance with conventional use.
10. Purchaser compensation claims for material damage are excluded. This does not apply if the defect has been maliciously concealed, if a guaranteed feature is not provided, in the event of death, physical injury, harm to health or breach of freedom, or in the event of deliberate or grossly negligent actions by the supplier. The above rules do not involve a change in the onus of proof to the purchaser's detriment. Further or differing purchaser claims for material defects are excluded.

VII. Software

The supplier's software is designed for commercial use only. It must only be installed and/or used by qualified staff who have been entrusted with the supplier's information in the installation and warning details.

Incorrect installation, operation and/or maintenance of the software by the purchaser can result in the software not running smoothly and/or damages being caused to systems and/or machines or humans.

If and insofar as software defects are based on non-compliance with the supplier's installation and warning details and/or on incorrect operation and/or maintenance of the software by the purchaser, these are not classified part of the purchaser's warranty duties. The supplier also bears no liability for resulting secondary damages. This particularly applies for any damages to the software and/or secondary damages to machines, systems or other products and humans caused by the defective software.

VIII. Commercial proprietary and copyrights; defect of title

1. The supplier commits to only making deliveries in the country of the delivery point, free of any third-party commercial proprietary or copyrights (hereinafter: proprietary rights). Insofar as a third party raises justified claims against the purchaser for breach of proprietary rights caused by contractually used services rendered by the supplier, the supplier is liable to the purchaser within the time frames stated in Art. VI no. 4 as follows:
- a) The supplier will, at its discretion and expense, either grant the purchaser the right to further use the relevant deliveries, modify these so that the proprietary right is not breached, or replace them. If this is not possible for the supplier under appropriate conditions, the purchaser is entitled to the legal withdrawal or reduction rights.
 - b) The supplier's duty to pay compensation is governed by Art. X.
 - c) The aforementioned supplier obligations only exist insofar as the purchaser immediately informs the supplier of the third party's claims in writing, does not acknowledge a breach, and the supplier is entitled to take all defence measures and engage in all settlement talks. If the purchaser stops using the delivery on the grounds of damage reduction or for other important reasons, it is obliged to advise the third party that this stoppage does not imply acknowledgement of a breach of proprietary rights.
2. Purchaser claims are excluded, insofar as it is responsible for the breach of proprietary rights. This also applies, insofar as said breach is caused by particular purchaser specifications, usage not foreseeable by the supplier, or by the fact that the delivery has been modified by the purchaser or used in conjunction with products not provided by the supplier.
3. In the event proprietary rights are breached, the provisions of Art. VI no. 5 and 6 apply accordingly for the purchaser claims stated in no. 1 a).
4. If other defects of title exist, the provisions of Art. VI apply accordingly.
5. Further or differing purchaser claims against the supplier and its assistants for defect of title are excluded.

IX. Impossibility; Contract adjustment

1. The purchaser is entitled to demand compensation if a delivery is not possible, unless the supplier is not responsible for this. The purchaser compensation claim is limited to 10% of the value of the delivery component which cannot be used properly due to the impossibility. This limitation does not apply in the event of deliberate intent, gross negligence, death, physical injury or harm to health, and does not imply a change to the onus in proof affecting the purchaser. The purchaser's right to withdraw from the contract remains unchanged.
2. Insofar as unforeseeable events as per Art. IV no. 2 significantly change the economic importance or content of the delivery, or have a significant impact on the supplier's operations, the contract is adjusted appropriately based on the principles of good faith. If this is not economically viable, the supplier is entitled to withdraw from the contract. If it wishes to exercise this withdrawal right, it must advise the purchaser of this immediately after becoming aware of the extent of the event, even if an extended delivery period had initially been agreed on with the purchaser.

X. Other compensation claims; Statute of limitations

1. Supplier liability for compensation, regardless of the legal grounds, and particularly for breach of contractual obligations and unauthorised actions, is excluded.
2. This does not apply for claims governed by the product liability act, in the event a material defect is maliciously concealed, in cases of deliberate intent, gross negligence, death, physical injury, harm to health, or a breach of important contractual duties. The compensation claim for breaches of important contractual duties is, however, limited to typical, foreseeable damages, insofar as these do not involve deliberate intent or gross negligence or liability is mandatory for death, physical injury or harm to health. The aforementioned rules do not entail changes to the onus of proof affecting the purchaser.
3. In the event of justified compensation claims raised by the purchaser – including in relation to defending against damages -, these are time barred as per the expiry date stated in Art. VI no. 4. The legal statutes of limitations apply for compensation claims governed by the product liability act.

XI. Jurisdiction and applicable law

1. The sole place of jurisdiction for disputes arising between the supplier and purchaser as a result of the contractual relationship is the supplier's headquarters. The supplier is, however, also entitled to take legal action at the purchaser's headquarters.
2. Legal relationships associated with this contract are governed exclusively by Federal German law, under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

XII. Binding nature of the contract

If certain provisions of these sales conditions are or become legally invalid, null and void, or infeasible, the rest of the contract shall remain binding. This does not apply if it is unreasonably difficult for either of the parties to continue upholding it.