

Terms and conditions Weatherdock AG

- 1. Exclusive Validity of these Conditions**

Any and all deliveries - including any and all future deliveries - shall exclusively be made on the basis of these General Conditions of Delivery and Payment. Purchasing Conditions of the Customer shall not be applicable to the contract and are herewith rejected in so far as they do not correspond to these conditions.
- 2. Conclusion and Contents of Contract**
 - 2.1 All offers are submitted without any obligation unless the Supplier expressly gave a binding promise or declaration. Any statements by representatives or agents must be confirmed in writing by the Supplier. All contracts shall become binding only if acknowledged by the Supplier in writing.
 - 2.2 Alterations and Amendments of this contract must be in writing.
 - 2.3 Documents attached to the offer by the Supplier serve as information for the Customer only and shall not be deemed to be guarantees.
 - 2.4 The rights of the Customer deriving from this Contract are not transferable.
- 3. Prices**
 - 3.1 Prices are quoted net ex works, not including VAT (Sales Tax). Packing is included.
 - 3.2 Even if the Customer pays part or all of the costs of tools used by the Supplier, such tools shall remain the exclusive property of the Supplier.
 - 3.3 In case of price or wage increases or other increases in the costs that arise after receipt of the order, new prices have to be discussed mutually.
- 4. Passing of Risk**

Any risk shall pass to the Customer when the merchandise leaves the factory or is placed at the Customer's disposal.
- 5. Delivery**
 - 5.1 Partial deliveries are permitted unless otherwise expressly stipulated Differences between the quantity delivered and the quantity ordered of up to 10 per cent are permitted. This applies both to the delivered quantity as a whole and to partial deliveries.
 - 5.2 Delivery periods accepted in the acknowledgement of order begin to run at the time of delivery from the Supplier's works. They may be exceeded by the Supplier by up to one week. Furthermore, these periods do not run while the Customer does not fulfil all his contractual duties.

An appropriate extension of the delivery time shall be granted in the following cases: unforeseeable shortfall of energy or raw materials, strike, lock-out, unforeseeable state action, default or non-performance on the part of ancillary suppliers or any other, comparable unforeseeable and uncontrollable event. If such events either last for more than one month or if the works of the Supplier himself or those of his ancillary suppliers close down or if any other event of comparable duration and gravity occurs, the Supplier shall be free to withdraw from the contract.
 - 5.3 If the Supplier gets in default with delivery, the Customer shall be entitled to withdraw from the contract if the Supplier fails to effect delivery within an additional period of time granted to him for delivery. The same right shall inure to the Customer if the Supplier is or becomes unable to perform delivery for reasons within his responsibility or control.
 - 5.4 Once a stipulated delivery time has expired, the Supplier shall no longer be obligated to effect deliveries.
- 6. Acceptance**

If the merchandise must undergo special testing, acceptance of the merchandise shall take place in the works of the Supplier. The costs of carrying out the tests necessary for acceptance shall be borne by the Supplier. All other costs, especially potential travelling costs and other expenses charged by state officials who are needed to effect acceptance, shall be borne by the Customer. If the Customer waives his right to attend such tests, acceptance shall be deemed to be granted at the time the merchandise leaves the Supplier's works.
- 7. Notice of Defects, Warranty, Liability**
 - 7.1 Notice of defects concerning either the quantity, the weight of the number of items delivered as well as notice of apparent defects must be given in writing within one week from the date of delivery. With regard to hidden defects this period shall run from the day of their respective reconcilability.
 - 7.2 The Supplier shall warrant for defects in the delivery that are notified to him in due course as follows:

Defective merchandise shall be repaired or replaced. It being at the discretion of the Supplier which alternative to choose. Replaced merchandise shall become the property of the Supplier. If repair or replacement have failed, the Customer shall be entitled to demand - at his option - a reduction in price or rescission of contract. Any further claims are excluded.
 - 7.3 The period of warranty shall be 24 (twenty-four) months from delivery of the merchandise.

The period of warranty for replaced or repaired merchandise shall be 6 (three) months. However, it shall run at least until the end of the original period of warranty.
 - 7.4 Any claims for damages based on negligence of the Supplier shall be excluded if the Supplier proves that he has acted without intention and/or gross negligence. In any event, any liability on the part of the Supplier shall be limited to damages arising out of events that could have been foreseen and/or expected by the Supplier at the time of delivery within the normal course of business.
- 8. Supplier's Right of Rescission of Contract**

The absolute creditworthiness of the Customer is indispensable precondition for delivery. If, after the conclusion of the contract, the Supplier obtains information which gives rise to doubts in this respect, he shall have the right, at his discretion, to demand either advance payment or collateral or, if a kind of payment other than cash had been agreed upon, to demand payment in cash or to withdraw from the contract for non-performance.

Such doubts shall be justified, in particular, but not exclusively in the following case: A considerable deterioration in the Customer's financial situation, suspension of payments, bankruptcy or composition proceedings, termination of business, change of property relations or of stock ownership etc., substantial pledging by the Customer of inventories, claims or of purchased merchandise as collateral to other creditors or failure of the Customer to pay due claims to the Supplier even after being formally reminded to do so.

9. Retention of Title

- 9.1 The Supplier shall retain full title to all merchandise delivered until all current or future claims he or any company he is associated with have against the Customer are fully satisfied. In the case of payment by cheques or by bill of exchange payment shall be deemed effected only after cashing of the respective instrument.
- 9.2 If the merchandise delivered is mixed or assembled with other objects, such processing shall be carried out by the Customer on behalf and in the name of the Supplier. If the merchandise delivered is being mixed or assembled with other objects, the Customer shall assign his rights of return, of property or of co-ownership in the mixed object(s) or the newly created object(s) to the Supplier and shall keep the mixed or new object(s) to the Supplier and shall keep the mixed or new object(s) with reasonable care.
- 9.3 The Customer may sell the merchandise under retention only in the ordinary course of business. The Customer herewith assigns in advance to the Supplier as collateral all claims he may have out of the resale of this merchandise or out of any other legal transaction in this respect. The Customer is authorized to collect the assigned claims. When the Supplier's claims are due, the Customer shall keep separately such collected amounts and shall immediately transfer them to the Supplier. The Customer must immediately notify the Supplier when any third party claims attachment of the merchandise under retention or of any of the assigned claims. Any costs of a potential intervention shall be borne by the Customer.
- 9.4 If the total value of collateral obtained by the Supplier exceeds the total amount of claims open to the Supplier by more than 20 per cent, the Supplier shall on request be obligated to retransfer the excess amount to the Customer
- 9.5 The authorization of the Customer to process or resell merchandise under retention of title or to collect claims assigned to the Supplier expires in the following cases: the conditions of payment are not observed, bills of exchange or cheques of the Customer are protested, a petition for insolvency proceedings is filed, payments are suspended, business is terminated or negotiations regarding a moratorium are initiated. In such case, the Supplier may take the merchandise into his possession. Unless expressly stated by the Supplier, such repossession, if conducted, shall not in itself constitute a withdrawal from the contract. In such case the Customer is obligated on request of the Supplier to notify the garnishees about the above mentioned retention or title and assignment of claims. He shall also provide the Supplier with all information and data needed by the Supplier in order to pursue his claims against the garnishees. The Supplier may, at his discretion, credit merchandise retaken from the Customer at its invoice value, at its current market value or at the value reasonably obtainable by the utilization or sale of such merchandise.

10. Conditions of Payment

- 10.1 Invoices must be paid without deduction within 30 days from the date of invoice.
- 10.2 The Customer may not withhold due payments. Set-off are permissible any against claims that have become res judicata or against uncontested claims. Irrespective of whether the claims of the Supplier are due he is entitled to set off his claims against claims the Customer has against companies he is directly or indirectly associated with.
- 10.3 In case of a substantial deterioration in the financial situation of the Customer, the Supplier shall have the right to demand immediate payment of all claims he has against the Customer.
- 10.4 In case of a delay in payment on the part of the Customer, the Supplier shall, notwithstanding his other rights, have the right to claim damages for default in the amount of the debtor interest or commission as usually charged by commercial banks or by his own bank.

11. Euro Clause

- 11.1 All payment obligations are deemed to have been incurred in Euro and shall be invoiced in Euro insofar as they have been entered into in a currency that will be converted into Euro and as soon as the Euro has been introduced as legal tender, but in any case not earlier than January 1, 2001. The conversion of the respective currency into Euro shall be carried out on the basis of the official conversion rate.
- 11.2 The conversion of currency into Euro shall neither give rise to any rights of termination, rescission or avoidance of this Agreement nor to any claims for alteration or further negotiation - neither in whole nor in part - of this Agreement.

12. Final Provisions

- 12.1 This Agreement shall be governed and interpreted under the law of Switzerland without the regulations about conflict of laws and the UN convention about the international sale of goods.
- 12.2 In the event that any dispute or controversy arises in connection with this Agreement, the parties shall discuss in good faith for a possible solution. If such a solution cannot be agreed upon, then such dispute or controversy shall be settled by arbitration according to the Rules of Arbitration of the International Chamber of Commerce, Paris, by three arbitrators appointed in accordance with the said Rules.
- 12.3 Venue for the arbitration proceedings shall be Zurich/Switzerland. The official language of the arbitration shall be the English language. The arbitration decision shall be final and binding upon the parties.