

Standard Terms and Conditions

Status 6/2005

Walcher Meßtechnik GmbH
Kirchzarten

All and any business undertaken by Walcher Meßtechnik GmbH (hereinafter called "the supplier") is transacted subject to the following conditions, each of which shall be deemed to be incorporated in any present and future agreement between the supplier and his customers. Any conflicting standard terms contained in documents that are used by the customer shall not apply. The said conditions are as follows:

1. Formation of Contract/ Contractual Obligations

- 1.1. Any information on products, prices, delivery and the like given by the supplier to the customer – even when it is described as an "offer" – is only an invitation to treat and shall form no part of any contract. A binding contract will only have been created when the supplier has confirmed in writing his readiness to deliver upon receipt of an order.
- 1.2. Content and scope of the contractual obligations are determined by the written declarations of the parties or – if there is no written order – by the written acceptance/confirmation of delivery of the supplier.
- 1.3. The weights, dimensions, capacities, prices, performance ratings and other data included in catalogues, prospectuses, circulars, advertisements, illustrated matter, price lists and the like constitute an approximate guide. Said data shall not be binding save to the extent that they are expressly included in the contract by written reference.
- 1.4. All goods are subject to technical development and amendments. At the time of delivery technical or manufacturing details of the ordered goods may have changed. In the event that such technical and/or manufacturing details have changed, the supplier shall be under no obligation to supply the ordered goods in their earlier form. For the avoidance of doubt, the supplier shall be deemed to have fulfilled his contractual obligations in this respect by supplying the technical and manufacturing details in their current form.

2. Drawings and Descriptive Documents

Any estimates, drawings and technical documents whatsoever submitted to the customer prior to or after the formation of the contract remain the exclusive property of the supplier. Copyright and other intellectual property rights in said documents shall belong to the supplier and said documents may not be copied, reproduced, transmitted or communicated to third parties without the supplier's prior written consent.

3. Prices

- 3.1. All prices quoted are ex works, packing and delivery or other shipping costs are not included.
- 3.2. All prices quoted are net-prices excluding VAT and any other taxes and duties unless otherwise specified.

4. Payment

- 4.1. The customer shall be entitled to a discount of two percent on the purchase price if payment is received by the supplier within ten days of the date of the supplier's invoice. Otherwise payment in full shall be made within thirty days of the date shown on the supplier's invoice.
- 4.2. The customer is not entitled to deduct from the price the sum of any debt the supplier may owe to him unless the supplier has acknowledged said debt in writing.
- 4.3. Bills of exchange will not be accepted.

- 4.4. Interest at the rate of eight percentage points above the base rate of the European Central Bank shall run at any part of the price not paid within the said thirty day period.

5. Delivery and Performance

- 5.1. The place of performance of any contract hereunder is 79199 Kirchzarten, Germany.
- 5.2. The delivery period shall run from the date of the confirmation of delivery by the supplier. The goods ordered by the customer are delivered in time if they are dispatched within the said delivery period or if the supplier has informed the customer within said period that the goods are ready for transport.
- 5.3. Should delay in delivery be caused by an act or omission of the customer the supplier may require the customer to take immediate delivery. If the customer fails to do so the supplier may claim for damages and/or rescind the contract after he has given written notice hereof to the customer and fixed a period of time in which the customer should have fulfilled his contractual obligations. In the event that the supplier rescinds the contract, the supplier shall be entitled to be reimbursed of all his expenses, notwithstanding that the customer may not have been responsible for his failure to take immediate delivery of the goods.
- 5.4. Should delay in delivery be caused by any circumstances beyond the control of the parties (including – notwithstanding the foregoing generality – industrial disputes, embargos and the like) the delivery period shall be extended by a reasonable period of time. If delivery, in the sole judgement of the supplier, is rendered impossible by such circumstances then the supplier may at his sole discretion rescind the contract without liability or damages being due against him.
- 5.5. If the customer fails to accept delivery on the due date, he shall nevertheless make any payment due on delivery as if the goods had been delivered.
- 5.6. If the parties have agreed that delivery is due at the request of the customer within a period of time stated in the contract and the customer fails to so request within three months of the expiry of said period, then the supplier is entitled to request the customer to take immediate delivery. Failure by the customer to take immediate delivery amounts to a breach of contract. In such circumstances, the supplier – notwithstanding other remedies – shall be entitled to damages even if the customer is not responsible for that breach of contract.

6. Passing of Risk

- 6.1. Failing written agreement to the contrary the goods are sold ex works at customer's risk. If the customer fails to accept delivery on due date, the supplier shall arrange for the storage of the goods at the risk and cost of the customer, the risk passing to the customer at the time the goods were ready for transport.
- 6.2. If the customer demands the goods to be sent to his place of business the risk shall pass on delivery to the first carrier, provided that this date is prior to the date indicated in clause 6.1 hereof.

7. Reservation of Title

- 7.1. The goods shall remain the sole and absolute property of the supplier until the customer has fulfilled all his obligations under the contract.
- 7.2. The customer is entitled to sell the goods in his normal course of business and the customer hereby assigns to the supplier any claim or right that he may have to the purchase price there under, but only to the extent of any sum due and resting owing by the customer to the supplier.
- 7.3. If goods owned by the supplier are admixed with goods owned by the customer or are processed therewith or incorporated therein the

product thereof shall be owned by the customer and the supplier in common.

8. Limitation of Liability (General Provisions)

The limitations set out in this clause hereinafter shall not apply if the supplier has intentionally withheld information about the non-conformity of the goods with the contract or if the goods do not conform with a guaranteed quality as described in § 443 I BGB (German Civil Code). A guarantee under § 443 I BGB will only be made if the supplier has acknowledged said guarantee in writing.

- 8.1. In the event of delay in delivery caused by the supplier the customer may claim a reduction in the price as follows: for each complete week of delay in delivery there shall be a reduction of 0.5 per cent of the value of the undelivered goods; in no case shall such reduction exceed a total of five per cent of the price. Any claim for further damages is excluded unless a pecuniary loss caused by the delay and not covered by the price reduction is proved.
- 8.2. If the supplier fails to perform any of his obligations under the contract the customer shall only be entitled to rescind the contract if
 - a) the failure by the supplier amounts to a fundamental breach of contract the supplier is responsible for and
 - b) the customer has given written notice to the supplier of his intention to terminate the contract and has allowed a reasonable period of time to expire to no avail. The provisions of § 323 II BGB (German Civil Code), however, remain unaffected.
- 8.3. Upon delivery of the goods, the customer shall not be entitled to rescind the contract if he is not able to return the goods and the supplier therefore rejects the customer's rescission.
- 8.4. The liability of the supplier is governed by the provisions of these present terms and conditions and by the contract. Any further liability is excluded. This limitation of liability does not apply in the case of personal injury, in the case of damages caused intentionally or which result from gross negligence on the part of the supplier nor does it exclude product liability under the German Product Liability Act (Produkthaftungsgesetz).

9. Limitation of Liability (Conformity of Goods)

The limitations set out in this clause hereinafter shall not apply if the supplier has intentionally withheld information about the non-conformity of the goods with the contract or if the goods do not conform with a guaranteed quality as described in § 443 I BGB (German Civil Code). A guarantee under § 443 I BGB will only be made if the supplier has acknowledged said guarantee in writing.

- 9.1. The supplier shall not be liable for the non-conformity of the goods with the provisions of the contract so long as this non-conformity is minor in its effect on value and usability of the goods. This limitation of liability does not apply in the following situations:
 - a) if the quality of the goods does not conform to the guaranteed standard;
 - b) in the case of personal injury;
 - c) in the case of damages caused intentionally or which result from gross negligence on the part of the supplier and it does not exclude product liability under the German Product Liability Act (Produkthaftungsgesetz).
- 9.2. Notwithstanding the provisions of § 280 I BGB (German Civil Code) the customer has to prove the supplier's responsibility for any alleged failure to perform his obligations.
- 9.3. The customer shall examine the goods immediately upon delivery and shall notify the supplier in writing without delay of any defects in the goods. In the event that the customer does not dis-

cover a defect in the goods until after this examination has taken place, the customer undertakes to notify the supplier

promptly of any other defect as soon as these defects are discovered. Failure to promptly notify the supplier shall disentitle the customer to any remedy under the contract for delivery of defective goods.

- 9.4. Further and in addition to the provisions of sub-clause 9.3 above the customer shall not be entitled to any remedy for the delivery of defective goods after the expiration of one year from the date of delivery of the said goods. This limitation of liability does not apply in the following situations:
 - a) if the quality of the goods does not conform to the guaranteed standard;
 - b) in the case of personal injury; in the case of damages caused intentionally or which result from gross negligence on the part of the supplier and it does not exclude product liability under the German Product Liability Act (Produkthaftungsgesetz).
- 9.5. Where the goods do not conform with the contract the customer may require performance. In this event the supplier shall be deemed to have performed his obligations under the contract by
 - a) repairing the goods or
 - b) replacing the goods.

Only in the event that the supplier fails to repair or replace the goods, within a reasonable period of time, or the customer cannot reasonably be expected to accept the repair or replacement of the goods, then the customer shall be entitled to rescind the contract or to a price reduction.

- 9.6. If the customer does not reasonably agree to the repair or replacement of the defective goods he loses any remedy open to him for delivery of defective goods.
- 9.7. In order to be repaired or replaced defective goods must be returned to the suppliers place of business. If the customer's complaint is justified the shipping costs will be refunded.
- 9.8. The supplier has no liability for defects that arise either as a result of materials provided or of a design stipulated or both whether by the customer or by a third party, always excepting the supplier's gross negligence and cases of personal injury.
- 9.9. Any further liability for a lack of conformity of the goods with the contract above and beyond that specified above is excluded unless the supplier is guilty of gross negligence or the goods are lacking a guaranteed quality.

10. Used equipment

Walcher Meßtechnik GmbH is under no obligation to take back used equipment (as defined in § 3 of the German Electrical and Electronic Equipment Act). The purchaser/customer/... is responsible for taking back and disposing of used equipment in accordance with the provisions of European laws regarding used equipment and with the German Electrical and Electronic Equipment Act.

11. Forum and Applicable Law

- 11.1. The courts of Freiburg i.Br., Germany shall have exclusive jurisdiction for all claims against the supplier.
- 11.2. The supplier shall be entitled to bring an action against the customer before the courts of Freiburg i.Br., Germany or before the courts having jurisdiction at the place of business of the customer.
- 11.3. The contract and these present terms and conditions shall be governed by German law including the provisions of the Convention on the International Sale of Goods (Vienna Convention).

12. Validity of Conditions

In the event that any clause of the conditions above is found to be void the remaining clauses will prevail and will be binding on and enforceable by each party.