

## GENERAL CONDITIONS OF SALE AND DELIVERY

### 1. General

- 1.1 These General Conditions of Sale and Delivery are valid for all goods and services supplied by WELL Diamantdrahtsägen GmbH (hereinafter called "WELL"), unless otherwise agreed in writing. General conditions issued by the customer are valid only if accepted in writing by WELL.
- 1.2 All agreements and legally binding statements of the parties are valid only if made in writing.
- 1.3 If any provision of these General Conditions of Sale and Delivery is held invalid in whole or in part, or if it cannot be implemented, the parties will replace it with a new one which comes as close as possible to the intention of the invalid provision. All other provisions hereof are not affected thereby.

### 2. Offers and Conclusion of a Contract

- 2.1 Offers that do not stipulate an acceptance period, and all information in price lists, are not binding.
- 2.2 A contract is deemed concluded after WELL has accepted and confirmed an order in writing.

### 3. Scope of delivery

- 3.1 Scope and delivery of goods and services are defined by the confirmation of the order by WELL. Goods or services not specified therein will be invoiced separately.
- 3.2 Pictures, drawings, and descriptions in brochures and catalogues, as well as data of dimensions and weights are to be regarded as approximate. They are binding only if expressly confirmed in writing.

### 4. Regulations in the Country of Destination

- 4.1 At the latest at the time of ordering, the customer must inform WELL of the statutory, administrative and other regulations and standards relating to the goods and services to be supplied by WELL, to their operation, and to the respective health and safety regulations.
- 4.2 If information from the customer in accordance with article 4.1 is missing, the goods and services to be supplied by WELL are in conformity with the regulations and standards valid at the head office of WELL.

### 5. Prices

- 5.1 The prices for deliveries within Germany are net in €, excluding VAT, carriage, installation, commissioning and advice.
- 5.2 The prices for export deliveries are net, EXW Mannheim (Incoterms 2014 ICC) in €, excluding customs duties, taxes, fees, insurance, installation, commissioning and advice.
- 5.3 If, between the conclusion of the contract and the acceptance of the goods, the costs underlying the calculation increase, WELL has the right to adjust accordingly the prices stated in the confirmation of the order.

### 6. Returns

Incorrectly ordered goods or goods that are no longer required are taken back by WELL only subject to WELL express written approval.

### 7. Terms of Payment

- 7.1 Payments are due within 30 days net from the date of the invoice.
- 7.2 In the case of exports, WELL reserves the right to demand an irrevocable letter of credit issued by a first-class Swiss bank.
- 7.3 Customer payments are to be made at the head office of WELL without deduction for discounts, charges, taxes and fees of any kind.
- 7.4 Upon expiry of the payment term set forth in the invoice, the customer shall owe default interest at the rate of 6% p.a. plus processing charges without formal notice. Compensation for further damages shall remain reserved. In the event of default of payment, WELL shall be entitled with immediate effect to stop further deliveries and to suspend any remedy of defects.
- 7.5 No payments may be withheld, in particular not in the event of delayed delivery or complaints. The offsetting of any possible counterclaims of the customer against claims of WELL shall be excluded.
- 7.6 In the event of default of payment, WELL reserves the right to rescind the contract, while demanding the return of the goods in accordance with Art. 214 para 3 of the Swiss Code of Obligations.

### 8. Retention of Title

- 8.1 WELL retains title to all goods delivered until such time as they are fully paid for. The customer is required to take all necessary measures to protect the ownership of WELL.
- 8.2 WELL has the right to enter the retention of title in the appropriate public register, and the customer shall be obliged to co-operate with this entry.

### 9. Term of Delivery

- 9.1 In the export business the date of delivery is the date of delivery to the carrier in Mannheim (FCA Mannheim according to Incoterms 2014 ICC). For deliveries in Germany, it is the date of delivery to the German destination.
- 9.2 The term of delivery starts with the acceptance and the written confirmation of the order by WELL, subject to clearance of all technical specifications.
- 9.3 The term of delivery will be extended appropriately,
  - 9.3.1 if the information necessary for the execution of the order is not given to WELL in time, or if this information subsequently is changed by the customer;
  - 9.3.2 if the terms of payment are not met, if letters of credit are opened too late, or if required import licences are not received by WELL in time;
  - 9.3.3 if hindrances occur that WELL cannot prevent, despite taking the necessary care, and irrespective of whether these occur at WELL, at the customer or at third parties. Such hindrances include, besides acts of God (e.g. epidemics, natural disasters, mobilisation, war, terrorism, riots), also significant business disruption due to accidents or labour conflicts or due to incomplete data processing, damage to or loss of data caused by third parties, late or deficient supply of necessary raw materials, semi-finished or finished products, defects of essential machinery or work pieces or administrative measures or omissions.
  - 9.3.4 For important reasons such as shortages in production or storage resources, which do not as such automatically extend delivery terms under article 9.3.3. WELL reserves the right to postpone already confirmed delivery dates by written notice to the customer. Such notice may be given up to ten working days prior to the confirmed delivery date. A postponement so notified shall not entitle the customer to compensation according to article 11.

### 10. Default of Delivery

- 10.1 The customer has the right to claim compensation for default of delivery to the extent that the delay can be proved to having been caused by WELL and to the extent the customer can document in detail the damages suffered as a result of the default. If the customer was accommodated with a replacement, he no longer has the right to claim compensation resulting from late delivery.
- 10.2 Compensation for default of delivery according to article 10.1 is in lieu of any other claims for damages and may never exceed the amount of damages proven by the customer. Compensation is further limited to a maximum rate of 0.5% of the contract price of the delayed part of the delivery for every full week of delay and is further capped at a maximum of 5% of the contract price of the delayed part of the delivery overall. No damages resulting from late delivery may be claimed for the first two weeks of any delay.
- 10.3 The customer has no rights or claims due to late delivery other than those expressly stipulated in articles 10.1 and 10.2. In particular, the customer is not entitled to rescind the contract. Application of Art. 190 of the Swiss Code of Obligations is expressly excluded.

### 11. Delivery, Transport and Insurance

- 11.1 Deliveries in Germany are made EXW; export deliveries are made EXW Mannheim (Incoterms 2014 ICC).
- 11.2 WELL must be informed in time of any special requirements concerning transport and insurance. The customer must lodge with the last carrier any complaints relating to the transport, e.g. for damage or loss, immediately upon delivery or receipt of the shipping documents.

### 12. Hazardous Goods

**The customer is required to observe the respective applicable legal requirements and the data sheets issued by WELL relating to the transport, the storage, and the handling of hazardous goods.**

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Gerichtsstand und Erfüllungsort D-68305 Mannheim

### 13. Installation

- 13.1 WELL will make available qualified personnel for the supervision or execution of installation work against separate charge. These services are rendered in accordance with the General Conditions of Installation of WELL.
- 13.2 In all cases, the warranty covers exclusively the goods supplied by WELL.

### 14. Inspection and Acceptance of Delivery

- 14.1 WELL inspects the goods and services in accordance with standard practice before dispatch or after performing the services. Any additional tests have to be agreed upon and will be invoiced separately.
- 14.2 The customer must inspect all deliveries and services supplied, including partial deliveries and partial services, within 20 days of delivery or performance, respectively, and must inform WELL in writing of any defects without delay, failing which the deliveries and services are deemed to have been accepted.
- 14.3 WELL must correct the defects notified in accordance with article 14.2 as quickly as possible, and the customer must give WELL the opportunity to do so. After the correction, an acceptance test will be made at the request of the customer or of WELL.
- 14.4 Deliveries and services are also deemed to have been accepted if the customer uses or is able to use them.
- 14.5 The remedies stated in articles 16 and 17 for defective deliveries and services are exclusive and the customer waives all other remedies.

### 15. Advice

- 15.1 WELL advises and supports the customer at his request in the process of analysing, planning and optimizing the operational use of WELL products.
- 15.2 The customer shall bear all risks arising out of or related to the implementation of recommendations given or solutions proposed by WELL. WELL and any third party retained by WELL for purposes of rendering advice, are fully released from liability for damages resulting from implementing such advice to the fullest extent permitted by law.
- 15.3 WELL will charge the customer based on time spent; at the customer's request WELL will advise on the hourly rates applied. WELL reserves the right to adjust these rates to market developments at any time. Expenditures and out-of-pocket expenses will be invoiced separately.
- 15.4 WELL may invoice the customer for advice rendered either when issuing the invoice for related delivery or services or separately. The customer also agrees to compensate WELL for time spent and expenditures incurred outside any order for goods or services (e.g. for time spent with preliminary inspections or further to requests for proposal if no order is placed subsequently). Payment shall be subject to the terms set out in article 7.
- 15.5 The customer undertakes, both for himself and for his employees and any third party retained by him, to keep strictly secret for an unlimited period any and all confidential information disclosed by WELL in the context of rendering advice. Any information that is not publicly known and which WELL may have a legitimate interest to keep secret shall be deemed confidential. In addition, the customer shall refrain from any attempt to solicit any employee of WELL either for the customer or for any other party.

### 16. Warranty for Defects

- 16.1 WELL warrants that the products delivered hereunder shall be free from defects in material or workmanship that could affect their proper use.
- 16.2 Express representations are only those expressly mentioned as such in the confirmation of the order by WELL. This warranty expires no later than the lapse of the term of warranty.
- 16.3 Any warranty or liability of WELL is excluded for damages that cannot be proved to result from defects in material or workmanship affecting the proper use of the products. In particular, any warranty or liability of WELL is excluded for damages resulting from wear and tear, deficient maintenance, non-compliance with operating instructions, overexertion, undue operation, chemical or electrolytic interference, incomplete data processing, damage to or loss of data, construction or installation not performed by WELL, as well as for damages resulting from other causes beyond the reasonable control of WELL.
- 16.4 The term of warranty is one year from the date of dispatch or from the date of notification that the goods are ready for dispatch. For products not manufactured by WELL, the terms of warranty of the respective manufacturer apply.

- 16.5 If, within the term of warranty, the customer discovers defects within the meaning of articles 16.1 and 16.2 in products supplied by WELL and wishes to make a warranty claim, then he must notify WELL at the latest within seven days of this occurrence.
- 16.6 WELL shall, at its discretion, either repair or replace such products or parts thereof. The replacement of defective products does not constitute an extension nor give rise to a recommencement of the term of warranty. Time spent and expenditures incurred by WELL as a result of notifications of defects that turn out to be unfounded, shall be charged to the customer pursuant to article 15.3.
- 16.7 The term of warranty expires prematurely,
  - 16.7.1 if the customer or third parties do not handle the products in accordance with the instructions given by WELL;
  - 16.7.2 if the products have been exerted beyond their specifications;
  - 16.7.3 if the customer or third parties make improper modifications or repairs;
  - 16.7.4 if the customer fails to issue a written complaint about a defect in good time (see article 16.5);
  - 16.7.5 if the customer, in the event a defect occurs, does not immediately take all suitable measures to mitigate the damage and to give WELL the opportunity to remedy the defect.
- 16.8 The remedies stated in article 16.6 for defects in material, design or workmanship and for the lack of express representations are exclusive, and the customer waives all other remedies.

### 17. Foreseeable undue Performance

- 17.1 If WELL undertakes without cause the performance of deliveries and services so late that the timely completion thereof can no longer be expected, or if a breach of contract attributable to a fault of WELL is apparently foreseeable, the customer has the right to fix an appropriate time limit for subsequent performance under threat of rescission of the contract. If this time limit expires as a result of the fault of WELL, the customer is entitled to rescind the contract with respect to the affected deliveries and services and he can reclaim the respective portion of the purchase price already remitted therefor.
- 17.2 Any further rights or claims of the customer shall be excluded (article 18).

### 18. Exclusion of Further Liability

- 18.1 All cases of breach of contract and the legal consequences there of are conclusively regulated by these General Conditions.
- 18.2 With the exception of those expressly stipulated in these General Conditions, the customer expressly waives all claims, regardless of their legal basis, in particular any claims for damages, reduction of purchase price, and cancellation of or rescission of the contract.
- 18.3 Subject to any mandatory strict product liability provisions, any liability for incidental or consequential damages is expressly excluded. In particular, WELL is not liable, on any legal ground whatsoever, for damages caused by defects including damages spreading out or consequential damages such as business disruption, loss of production, capital costs, lost profit, third-party claims (including claims of the customer's clients) or any interests of the customer to be held harmless against such claims, respectively.

### 19. Safety Measures in Foreign Countries

If the presence of WELL personnel is necessary outside of Germany for the execution of contractual obligations, the customer is responsible to take all necessary measures for their safety. In case of German or foreign travel warnings for a country or for a part thereof, WELL reserves the right not to deploy any workforce and to withdraw any personnel already on site.

### 20. Applicable Law and Jurisdiction

- 22.1 All contracts concluded in accordance with these General Conditions of Sale and Delivery are governed by the laws of Switzerland or Germany, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.
- 22.2 The place of jurisdiction is Le Locle (Switzerland). However, WELL reserves the right to take legal action before the courts at the domicile of the customer or before any other competent court.