

Walther Trowal LLC

CONDITIONS OF SALE AND DELIVERY

I. Applicability of the terms & conditions of sale and delivery

1. The current terms & conditions of sale and delivery (hereinafter referred to as "business conditions") shall apply for all offers and contracts on deliveries and services (hereinafter referred to collectively as "deliveries"), which we, as seller or contractor, provide for a customer.
2. These business conditions are exclusively applicable and any customer conditions deviating from or conflicting with these business conditions are not accepted by us unless they have been explicitly confirmed by us in writing. Even if we, being fully aware of customer deviations from, and in conflict with our own business conditions, fulfil the delivery without any reservations, this cannot be regarded as agreement – in such case, our conditions of sale and delivery shall be applicable too.
3. Our business conditions also apply as a framework agreement for all future contracts with the same customer, without the need that we have to point this out in each individual case.
4. Individually agreed clauses with the customer apply preferentially (including additional agreements, amendments and modifications). The content of such individual agreements requires a written contract and/or our written confirmation.
5. Statements and notifications of legal relevance, which have to be provided to us by the customer after conclusion of contract e.g. deadlines, reminders, letters of cancellations etc. are required to be in written or text form.
6. Our business conditions apply only for companies, legal entities operated under public law and special funds under public law in accordance with § 310, paragraph 1 BGB.

II. Offers, conclusion of contract and authority of third parties

1. Our offers are subject to change. An order which is placed by the customer is regarded as a legally binding offer; insofar as where the order does not foresee any deviations, we can accept this application to conclude a contract within 10 working days after receipt. The acceptance can be declared by us at our discretion either by a written order confirmation or by delivery to the customer.
2. All documentation given to our customers, for example; reproductions, drawings, plans and other documentation, remain our property. We reserve the copyright regarding such documentation as far as copyright protection is enforceable; it is not permitted without our express written permission to use such documentation for another purpose, to make copies or to make such documentation accessible to third parties. They are to be exclusively used for the purposes as per our quotation and where no contract is concluded they have to be returned to us anytime upon request in writing. They have to be kept strictly confidential towards third parties. Paragraph XV of these business conditions applies accordingly.
3. Pictures, drawings, measurements, weights and colours as well as information about performance and consumption by machines which we deliver that appear in catalogues provided by us, price lists or other documentation represent approximations usual to the trade. Only the information provided in our order confirmations are binding on our delivery obligations.
4. Any necessary building, trade or other administrative legal approval or permission must be obtained by the customer at their own risk. If the customer is unable to obtain such approval - for whatever reason - and is therefore unable to fulfil a binding contract corresponding to our acceptance of the offer because of administrative requirements or changes, we are entitled to rescind the contract and to claim damages.

III. Prices

1. The prices quoted for our deliveries are to be determined in US Dollars.
2. Unless otherwise explicitly agreed to in writing or text form to the contrary, our prices are quoted as ex-works i.e. without shipping, packaging, value added taxes, other legal taxes and duties etc. included.
3. For orders to which no firm prices have been explicitly agreed to for a set time period and in writing or text form, our list price, which is effective on the day of delivery, will be charged.
4. For The Prices payable for the Goods as set out in the relevant Sales Contract (the "Contract") are, inter alia, based on the prevailing U.S. customs duties, tariffs, and other import/export duties (collectively, "Duties") in effect as the Contract's execution date (the "Execution Date"). If a significant change (an increase or decrease of ten or more percentage points (10%)) in the applicable Duties occurs after the Execution Date but before the Delivery of the Goods (as defined in the Contract), the Prices shall be adjusted accordingly. The price adjustment shall become effective seven (7) days after the change of Duties becomes effective, as officially published or notified by the relevant authorities. In the case of an increase of Duties, the Prices shall be increased by an amount equivalent to the increased Duties liability, proportionate to the Goods' customs value. In the case of a decrease of Duties, the prices shall be decreased by an amount equal to the reduced Duties liability, proportionate to the Goods' customs value. The adjusted Prices shall apply to all Goods not yet delivered as to the Effective Date of Adjustment. The Party becoming aware of the Duties change shall notify the other Party in writing within five (5) days after becoming aware of the change, providing credible evidence (i.e. official statements of governmental authorities) for the change of Duties, as well as a comprehensible calculation of the price adjustment. The Seller shall provide the Buyer with an updated invoice or a price adjustment statement reflecting the new Prices for the undelivered Goods.

IV. Payment, default, deferment

1. Payment shall be made as follows:
 - a) For product deliveries from the TROWAL consumables and spare part departments: within 30 days after receipt of invoice net without any deductions;
 - b) For "WALTHER TROWAL" plants and machinery: 30% of the purchase price to be prepaid as down payment after receipt of order confirmation, 60% of the purchase price as soon as we have informed the buyer of availability of goods or delivery has been made. 10% within a further 30 days. each net without any deductions
2. Bills of exchange and checks/cheques are only accepted as on account payments. The customer shall bear the costs of discounting and collecting any such paper transactions.
3. In the case of non-adherence to the payment terms or in the case that we get knowledge - after conclusion of the contract -, that the pecuniary claim is endangered by insufficient financial capability, we are entitled to provide outstanding services only against appropriate advance payment or security deposits.
4. The customer may exercise the rights of set-off and/or retention only if counterclaims have been legally established, are undisputed or are ready for decision in proceedings pending at court.

V. Delivery times and default

1. Delivery dates or time limits, which can be agreed either bindingly or non-bindingly, shall be agreed in writing or text form.
2. If delivery or performance delays occur which are the result of force majeure, strikes, governmental measures and other unforeseeable, inevitable and severe events which make delivery substantially more difficult or impossible – the contracting parties are not obliged to meet bindingly agreed-to-services for the duration of the delay and/or the extent of its impact. The same applies, if such delays occur at a time when the concerned contracting party is in default, unless the default was caused intentionally or was due to gross negligence. The contracting parties are obliged to provide necessary information immediately and to adapt their obligations accordingly to the modified circumstances and in line with the principle of worth and good faith. If the cause of delay shall last for more than 3 months, each contracting party can withdraw from the contract with respect to any unfulfilled portion of it.
3. The delivery time shall be regarded as complied with by us if the subject of the contract has left our company or the manufacturer's factory before expiration of the deadline or if we have announced readiness for shipment to the customer.

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4. Should the customer incur damages due to a delay which we are responsible for, the customer is entitled to claim for liquidated damages. In the case of slight negligence, the liquidated damages claim shall be limited only to the value of the delayed goods/services which have not been delivered/supplied to the customer in accordance with the agreement as a result of the delay and at the rate of 0.5% for each full week of delay and up to a maximum of 5% in total. Irrespective of this, the customer is entitled to withdraw from the contract without limitations but in accordance with legal provisions. Further claims for default in delivery however only arise in accordance with paragraph XII of these business conditions.
5. We are entitled to provide partial deliveries or partial services, at any time, as far as this is reasonable for the customer.
6. In the case we are not supplied ourselves, albeit that we have placed congruent orders to our suppliers and/or manufacturers, the delivery time will be extended accordingly. In such cases, we will inform the customer about the non-availability of the supplies immediately.

VI. Delay of acceptance and return delivery

Should the customer be in default of acceptance or fail to perform an act of co-operation or if our delivery is delayed for other reasons attributable to the customer, we are entitled to claim compensation for the damages incurred thereby, including any additional expenses incurred e. g. storage costs. For this, we will charge lump-sum liquidated damages of 0.5% of the net price of the subject of delivery and/or service for each week starting with the delivery date, and/or in lack of such date, with the announcement of readiness to despatch and up to a total maximum of 5%.

We reserve the right to submit evidence of greater loss, further damages and statutory claims (particularly for the reimbursement of additional expenditure, appropriate compensation, termination) and our rights shall remain unaffected.

The customer is entitled to prove that we did not incur any or significantly less damage than the aforementioned predetermined amounts.

If properly ordered and delivered goods are returned, only 80 % of the invoice amount is reimbursed, provided that the returned goods are in proper and unused condition. The customer accepts these conditions by his return consignment to the place of manufacture. The return delivery has to be carried out according to Incoterms 2010 DDP Haan, Germany.

VII. Transfer of risk and insurance

Unless otherwise agreed, in individual cases, delivery shall be made on an 'ex works' basis, which is applicable for the transfer of risk, even in cases where we (if required) take over additional services such as: transport or shipping costs etc. In the case of an agreed sale including delivery, the risk is transferred to the customer at the time of handing over the goods to the shipping agency, forwarder or to the person designated for the shipping. Insofar as commissioning is agreed as part of the sale, acceptance shall determine the transfer of risk.

Insurances are only set in place upon the express request in writing or text form and agreement to the extra cost by the customer and when confirmed by us in writing or text form.

VIII. Customer delivery control

The customer is obliged to check the goods which we deliver immediately upon receipt. They must immediately let us know of any obvious defects, notifying us in writing or text form within 8 calendar days at the latest. Defects which the customer is unable to detect within this time period - even after careful checking - must be made known to us in writing or text form immediately after detection. The sending of the notification is deemed to be sufficient to comply with the deadlines mentioned in the aforementioned sentences 2 and 3.

IX. Material defects

1. We will at our choice either rectify or replace parts of the subject of delivery which were demonstrably defective at the time of transfer of risk (supplementary performance). The customer is required to grant appropriate time and opportunity for supplementary performance to be affected.
2. If supplementary performance fails, the customer is then entitled to apply other legal warranty rights. The customer has no right of withdrawal with regard to negligible and minor faults. Furthermore, the special regulations of XII of these business conditions are applicable.
3. If only individual components of the sold subjects of supply are defective, the customers' possible right of withdrawal shall only refer to the defective component, unless this is not just and reasonable for the customer. The customer may only retain due payments in a payment series which correspond in value to defects incurred.
4. We are not responsible for any consequences resulting from the following circumstances as listed hereinafter: unqualified or improper use, especially overloading, improper assembly and/or commissioning by the customer or third parties, normal wear and tear typical to use, faulty careless treatment, omitted maintenance and/or maintenance not complying with our instructions or our operating manuals, improper equipment/operating materials and spare parts, faulty construction works, unsuitable building ground, chemical, electro-chemical or physical influences, unless the customer can provide evidence that the fault did not result from the actions of the customer or third persons.
5. Second-hand subjects of delivery are sold and delivered under exclusion of any warranty. This exclusion does not apply for claims in accordance with paragraph XII of these business conditions.

X. Patents

1. We will supply the subject of delivery in the country and/or place of delivery free from industrial property rights e.g., patents, utility patents – hereinafter referred to as 'property rights'. In the case that any third parties have legitimate claims of property rights against the subject of delivery - or parts thereof - we will (at our discretion) either effect a right of use or modify the subject in such a way, that property rights are not infringed. Customer claims are excluded as far as the infringement of property rights is caused by the requirements stipulated by the customer, by an application and/or use not foreseeable by us or if the subject of delivery has been changed by the customer or is used together with products not delivered by us, thus producing a possible infringement of property rights.
2. The customer is obliged to inform us about claims asserted by third parties immediately and in writing or text form. They are not entitled to accept claims of third parties. Protective measures or compromise negotiations are exclusively reserved for us to undertake.
3. In all other cases of infringement by third parties against property rights, the stipulations of paragraphs IX and XII of these business conditions shall apply correspondingly.

XI. Retention of title

1. We shall retain ownership of the delivered items until all of our payment requests, irrespective of their legal basis, which arise from the business relationship with the customer, have been settled. For current invoices, the retention of title to all goods serves to protect the request for the full account balance.
2. If by further processing, our property then becomes processed into other goods, the customer shall, as collateral security, transfer our financial claims regarding the original subject property over to the resulting object created as a result of the further processing and in the value ratio to which the original delivery is to the value of the newly processed goods. The customer is obliged to maintain and store the further processed goods subject to no charge to us.
3. The customer has the right to sell the original delivered item or that item installed into the further processed goods during the normal course of their business subject to the following provisions:
The customer assigns to us in advance all possible rights including ancillary rights that they may have against their customers as a result of the sale of further processed goods or from their business relationship with said customers. We hereby accept such assignment.
We are entitled to notify our customer's customer of such assignment of our customer's demands for payment to us and to collect them.
4. The customer is entitled and obligated to collect the claims assigned to us only until such time as we have not withdrawn the permission to do so. This permission ceases, however, even without our express withdrawal, in the event of the insolvency of the customer, if they stop payment, or are in delay of payment.
Upon our request, the customer is obligated to inform us in writing or text form as to whom they have sold the goods that they have received from us or items which were produced by machining goods that we had delivered by us or a third party. The customer shall also inform us about the resulting claims accruing from such sales and confirm the accuracy and completeness of this information by affidavit.

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5. We commit ourselves, at our discretion, to transfer our ownership of the goods and the right of claims assigned to us over to the customer at their request, insofar as the value of such ownership and claims is greater by 10% than that of the value of our total outstanding claims against the customer.
6. The customer is not entitled to make other dispositions regarding delivered goods, items resulting from processing or regarding any claims being assigned to us, especially not to pledge or to assign these items as security. They are however, obligated to inform us immediately in writing or text form of any impairment of such rights, especially concerning the seizure (by others) of items that we own or co-own.
7. In the case of delay in payment, we have the right to seize the goods to which we have retention of title, after an appropriate period of time. If the retained goods are in the possession of a third party, the customer is, upon our first request, obliged to inform us of the whereabouts of the goods in retention and agrees that we can take possession of the goods in this case. We will only make use of the rights mentioned here if we have withdrawn from the contract.

XII. Further liabilities

We are liable for damages, which did not occur to the subject matter of the delivery itself (for whatever legal reason) only in the case of deliberate intention, gross negligence by the owner, the institution, managerial staff for defects which we have maliciously concealed, culpable injury to life, body or health in the case that we have granted a promise of guarantee or if, in accordance with the German Product Liability Act, we should be liable for damages to persons or items which are privately used. Furthermore, we are liable for culpable infringements of important contractual obligations, also in the case of gross negligence by non-executive employees and in such cases of slight negligence, in the latter case, however, limited to the contractually typical and reasonably foreseeable damage. Further indemnity claims against us are excluded.

XIII. Limitation of claims

All customer claims – for whatever legal reasons – expire within 12 months; this also applies for the limitation period of recourse actions within the supply chain according to § 445 b, clause 1, BGB, as far as the last contract within this supply chain is no sale of consumer goods. The expiry suspension resulting from § 445 b, clause 1, BGB remain unaffected. For indemnity claims according XI. of these Conditions of Sale and Delivery the legal periods apply. They also apply for the fault of a structure or for items of delivery, which have been used for a structure according to their standard utilization and which have caused its deficiency.

XIV. Utilization of Software

As far as software is included in the scope of delivery, the customer is being granted a non-exclusive right to use the software supplied including its documentation. The right is transferred for use on the contract item it is determined for. Use of the software on more than one system is prohibited. The customer may only reproduce, revise or translate the software or transform the object code into the source code within the context of the legally permissible scope (§§ 69 a ff. UrhG [German copyright law]). The customer is obliged not to remove the manufacturer's information – in particular the copyright marks – or change said information without previous, explicit agreement by the supplier. We and/or the software suppliers retain all other rights on the software and documentation including copies thereof. Allocation to sub-licensees is not permitted.

XV. Confidentiality

1. The customer is obliged to keep all documents and information received from us, such as specifications, copies, drawings, calculations and other documents and information strictly confidential; the same applies for all our other business and trade secrets, which the customer becomes aware of and to information resulting from reverse engineering of our products. These may only be made available to third parties after our express approval in writing. This confidentiality obligation also applies after the completion of this contract, and it only ceases if and as far as the production knowledge and any other information contained in the provided copies, drawings, calculations and other documents have become generally known, and at the latest however after the expiration of 10 years from the date of delivery of the item being delivered.
2. The customer is obliged to treat all commercial and technical details regarding the contract concluded with us and all commercial and technical details as business and/or trade secrets. Furthermore, the customer is obliged to maintain silence about the business relation with our company. Exceptions require our prior approval in writing.

XVI. Place of performance, jurisdiction, governing law

1. As far as the contract does not provide to the contrary, the place of performance for all obligations arising from contracts with our customers is the registered office of our company as detailed below.
2. If the customer is a merchant, corporate body under public law or a special public sector entity under public law, the place of jurisdiction for all disputes resulting from the contractual relationship is exclusively the judicial court at the location of our company. However, we are also entitled, at our discretion, to take action under the prevailing jurisdiction at the place of delivery and/or performance of the customer or at the customer's place of business.
3. For this business relationship and the entire legal relationship between us and the customer, the applicable law is that of the State of Michigan. The applicability of the UN (CISG) international sale of goods laws are specifically excluded.

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