

Terms and conditions of sale and service provision

Welba GmbH, Gewerbepark Siebenmorgen 6, DE-53547 Breitscheid

1. Scope

The following terms and conditions of sale and delivery apply to all business transactions between Welba and the purchaser. Any conditions applied by the purchaser which diverge from or contradict our terms and conditions are hereby explicitly rejected. Any supplementary conditions are subject to our approval in writing.

Even if we are aware of contradictory, diverging or non-regulated terms and conditions applied by the purchaser, only our general terms and conditions of business will apply, even if the client refers to the validity of his general terms and conditions of business in orders and in all correspondence.

Our terms and conditions of business will also apply to future contracts with the purchaser even if we do not mention this specifically.

2. Prices

The prices quoted are subject to alteration and will not necessarily apply to subsequent orders. They are based on current wage and material costs, and if those costs change by the time of delivery, we are entitled to adjust our prices accordingly. Prices are in all cases ex-works, excluding packaging – unless otherwise agreed on the basis of the INCOTERMS. Within Germany we deliver free to destination as from a net value of goods of €1000. Packaging is invoiced at cost and is non-returnable.

3. Payment

Unless advance payment is agreed, all invoices are payable within 30 days of the invoice date or date of notification that the goods are ready for dispatch, in cash or by transfer to our bank without deductions or charges to us. Payments are always accounted against the oldest debt, even if a payment is indicated as being for specific goods. Offsetting or retaining amounts is possible only in the event of claims by the client which are specifically recognised by us in writing. Warranty claims do not affect the date on which payments are due. No reminder is required for the client to be regarded as in default. Without prejudice to other rights, late payment interest of 3% p.a. more than the current discount rate of the Deutsche Bundesbank (German Central Bank) will be charged.

Failure to comply with payment terms, or circumstances which become known to us after signature of the contract and which are likely to reduce the creditworthiness of the client or person jointly liable for the client's obligations, will mean that all outstanding sums are immediately due, regardless of any bills of exchange that have been accepted. In such cases we are also entitled to make further deliveries only against full cash payment in advance or against provision of a security or, if payment other than in cash has been agreed, to require payment in cash, to withdraw from the contract, or to claim compensation for non-fulfilment.

NB: Unless otherwise specified, the invoice date is the delivery date.

4. Documents

The documents relating to the order, including illustrations, drawings and weights, are for guidance only. The details should not be regarded as reflecting exactly the characteristics of our products. Clients are not absolved from the duty, before using our products for their purposes, to check the details and recommendations provided by us.

5. Copyright

Welba retains all property rights and copyright in respect of all estimates, samples, drawings and other documents. These may not be made accessible to third parties. If for any reason the order is not placed or not executed, all drawings and other documents must, at our request, be returned to us immediately.

6. Delivery and purchase obligation

Delivery periods are indicated in good faith, but are not binding. Part-deliveries are permissible. The delivery period starts on the day on which Welba and the client reach agreement on the order. It is complied with if notice that the goods are ready for dispatch is sent in due time.

In the event of purchasing delays we reserve the right, after granting the purchaser an appropriate period for fulfilment or remedy without success, to withdraw from the contract or to claim damages. The amount of damages we can claim without producing supporting evidence is 25% of the agreed price. The purchaser may produce evidence that no loss has arisen or that the loss was less than the said amount. We reserve the right to claim a larger amount of damages subject to the production of supporting evidence.

Call orders must – unless specifically agreed otherwise – be called off within 12 months of the original order date.

If we are prevented from delivering as a result of force majeure, strike, civil disturbance, power failure, working restrictions, war, mobilisation, transport/traffic disruption, disruptions to operations at Welba or our suppliers, or similar circumstances beyond our control despite reasonable precautions, we are released from our contractual obligations for the duration of the circumstances concerned. If delivery becomes impossible as a result of those circumstances, our duty to fulfil the contract lapses. In particular, we are released from all obligations if our suppliers are released from their obligation to deliver on the basis of their terms and conditions of delivery and payment.

7. Shipping

In principle, all consignments are shipped at the expense and risk of the client. In the absence of specific arrangements, we will use what we consider to be the most suitable shipping method. We do not warranty to use the cheapest method. Insurance, always at the client's expense, is taken out only if the client specifically requests it.

8. Transfer of risk

The risk - including the risk of confiscation - is transferred to the customer when the goods are handed over to the haulier or forwarder or, at the latest, when they leave the factory, even where delivery is free to the client's premises, FOB or CIF.

9. Warranty

Our warranty terms, to the exclusion of all other warranty claims, are as follows:

- a) We warranty that our products are free from manufacturing and material defects. The warranty period for all mechanical and electronic parts is 12 month.
- b) The warranty period starts on the delivery date. If our operating or maintenance instructions are not observed, if products are modified in any way, if components are changed or if non-specification materials are used, the warranty is rendered invalid.
- c) All defective parts or services will, at our discretion, be either repaired, rectified or replaced free of charge.
- d) We may satisfy the client's claims for remedy by offering an appropriate price reduction for the defective component or service.
- e) Warranty claims will be entertained only if the client complies with the agreed payment terms. If a claim in respect of a defect is lodged, the client must have made part-payments which are commensurate with the defect.
- f) Welba may comply with a request for warranty repairs to be carried out at a location specified by the client, in which case the parts under warranty will not be invoiced, but working time and travel costs will be charged at our standard rates.
- g) The client is entitled to withdraw from the contract in respect of the defective parts or services if repair or rectification is not possible or if three attempts fail.
- h) The warranty only covers defects present when the risk is transferred. It is valid only if the client complies with the obligation to examine the goods and report defects immediately. The client must report faults within three days of receiving the goods.
- i) The warranty does not cover normal wear and tear, or damage resulting from incorrect or negligent use, overloading, or use with unsuitable equipment.
- j) We do not warranty or accept liability for products from other manufacturers. However, our warranty rights against the supplier are transferred to the client from the outset. Only if claims cannot be pursued against the supplier because the latter has become insolvent will Welba honour the warranty for defective products from other manufacturers in the same way as for its own products.

10. Liability for defects

Welba is liable for damage (direct or indirect) only in the event of gross negligence on our part. Further liability claims - in particular consequential damage, non-fulfilment or late fulfilment - are excluded, with regard to both the liability basis and the liability amount. This also applies to claims resulting from unauthorised action.

Purchasers of all electrical and electronic devices manufactured or marketed by Welba undertake not to resell them in the territory of the United States of America or Canada without our written consent.

The following applies to software developments: The placing of an order constitutes an acknowledgement that it is not possible to develop software in such a way that it will operate without errors under all application conditions. The client is obliged to provide the supplier with verifiable evidence of the nature and occurrence of deviations from the documentation and to assist with the containment of errors. Liability for defects does not cover errors caused by deviations from the conditions of use envisaged for the program and indicated in the documentation.

11. Place of fulfilment and court of law

The place of fulfilment for all mutual obligations is Breitscheid. This applies also to cheques and bills of exchange taken in payment. If the client is a registered trader, the court of law competent for all disputes directly or indirectly resulting from the contract is the court at Linz/Rhein. Contractual relationships are governed by German law excluding the UN Sales Convention (CISG).

12. Retention of title

All goods, even when supplied abroad, remain our property until all our claims against the client resulting from the business relationship have been met.

Until then, our goods shall not be pledged, deposited as security or otherwise transferred, and resale or further use is permitted only in the case of dealers and contractors in normal business circumstances, and provided that the dealer or contractor receives immediate payment or stipulates that title is not transferred to the third party until the latter has paid for the goods in full. To this extent we authorise transfer of title to the third party. In the event of resale or further use, the client, in placing the order, transfers his future purchasing price or contract remuneration claims to us as security, without the need for any special declaration to this effect. Until further notice, the client is authorised to collect newly arising claims, provided he immediately and directly meets our due claims.

If the goods are impounded by a third party, the client is obliged to inform the enforcing official about the retention of title. He is also obliged to inform us by registered letter, attaching the relevant documentation together with a solemn declaration that the impounded goods are identical with those supplied by us under retention of title and not yet paid for in full. Any costs thus incurred are for the client's account. The client is obliged, in the event of suspension of payments, to identify without delay any remaining goods supplied by us and assigned receivables and to provide us with a precise list thereof.