

Terms and Conditions of Delivery and Payment of WENZEL Metrology GmbH

WENZEL®

For use opposite:

1. a person who, when concluding the contract, acts in the exercise of his commercial or self-employed professional activity (company)
2. legal persons under public law or a special fund under public law

The terms and conditions of Delivery and Payment set out below form the basis of the contracts for delivery and services of WENZEL Metrology GmbH (the Company), supplementing applicable German law. No variations to these Terms and Conditions stipulated by the Buyer shall be binding unless expressly confirmed by the Company in writing.

I. Conclusion of Contract

A contract for delivery and services shall be brought about by written confirmation of order by the Company only. The offers of the Company are subject to confirmation and non-binding unless they have explicitly been defined as binding. The written confirmation of order alone is binding. Any supplementing or amending thereof or any oral side agreements shall require written form to be effective. The company reserves all property rights, copyrights or neighbouring rights with respect to estimates of cost, drawings and other records. The granting of any third-party access to these documents shall require the express approval of the Company.

II. Prices

1. The prices of the Company are carriage/charges forward ex works in Euros plus the statutory VAT applicable at the time of delivery, unless other terms have been specified.

2. Carriage, postal charges, customs duties and packaging shall be borne by the Buyer; the same shall apply to transport, theft or other insurances requested by the Buyer.

3. Any modification of the product requested by the Buyer after their order was confirmed shall be at the Buyer's expense.

4. Design drawings, tools, samples and other preparatory work requested by the Buyer shall be invoiced separately.

III. Terms and Conditions of Payment

1. Unless otherwise agreed, all invoices by the Company are payable immediately with no discounts.

2. In case of any default in payment the Company shall be entitled to charge default interest in accordance with the statutory provisions.

3. We do not accept any bills or notes, and cheques only on account of performance and under reserve of receipt of a credit note.

4. In the absence of a special agreement, cash payment for all goods shall be individually made free paying office of the Company. The following applies:

Measuring machines, special measuring systems and measuring tools

30% advance payment after receipt of order confirmation,
60% 15 days before the date of delivery according our order confirmation,
10% 14 days after initial operation, however 30 days after delivery at the latest,
each within 14 days net.

Accessories (e.g. measuring probe, feeler)

100% upon delivery
within 14 days net.

5. Should the Buyer get into arrears with the payment, the Company shall be entitled to repudiate the contract.

6. In case of a substantial risk to the payment claims the Company shall be entitled to demand advance payments or sufficient collateral.

7. The Buyer shall only be entitled to a set-off, if their claims have been recognized by declaratory judgment or by the Company or if such claims be non-controversial, no matter whether notices of defects have been given or counterclaims have been asserted. The Buyer shall only be entitled to exercise a right of retention, if their counter-claim is based on the same contractual relationship.

8. The right to withhold payments, is entitled to the orderer only in so far as his counterclaims are undisputed or legally established.

9. cancellation or alteration of the order after receipt of the order confirmation is generally excluded (exception: right of withdrawal in accordance with the relevant statutory provisions (e.g. in the event of impossibility of performance or delivery or in the event of failed subsequent performance in the event of a material defect)

IV. Delivery Period, Defective Delivery

1. Delivery and performance periods as well as delivery dates shall only be agreed for special measuring systems. They shall only serve as a guideline, unless they have been expressly specified as binding by confirmation letter in the individual case.

2. The delivery and performance periods as well as delivery dates can be derived from the agreement of the contractual parties. Their observing by the Company is on the condition that all records, permits and releases to be procured by the Buyer have been obtained and all obligations incumbent on them have been fulfilled and the advance payment due has been received.

3. The observance of the delivery period is subject to correct and timely supply of the Company by its suppliers. The Company shall notify the Buyer of any delays as soon as it obtains knowledge thereof.

4. An agreed delivery period shall be deemed observed, if the product has been shipped from the works of the Company or readiness for dispatch has been notified to the Buyer. If acceptance has been agreed, the date of acceptance or, in the alternative, the notice of readiness to take delivery shall be authoritative, unless there is sufficient cause for rejecting acceptance.

5. An agreed delivery period shall be reasonably extended in case of measures concerning industrial action, particularly strikes and lockouts, as well as in the occurrence of unforeseeable impediments that are beyond the control of the Company, if such impediments have a provably substantial adverse effect on the completion or delivery of the product. This shall apply accordingly, if such impediments occur at suppliers of the Company.

6. If the manufacture of the product or the performance of the delivery requires an act on the part of the Buyer, then the delivery period shall not commence to run until such act of the Buyer has been completed.

7. If the delivery period has been exceeded, then the Buyer shall grant the Company an additional period of time of reasonable length which must not go short of 3 weeks.

8. If the Buyer can foresee that it will be impossible for them to take delivery of the product at the delivery date, then they shall notify the Company immediately, stating the reason thereof, and specify a date when they can take delivery. If the Buyer does not take delivery on the delivery date, they shall nonetheless be obliged to pay the part amount due upon delivery or readiness for dispatch respectively. The Company shall take care of the storage of the product at the risk and the expense of the Buyer. The monthly storage cost shall at least come to 1% of the invoiced amount. At the Buyer's request, the Company shall insure the product at the Buyer's expense.

V. Passing of Risk

1. The risk shall pass to the Buyer upon the dispatch of the product, even if part deliveries have been agreed or the Company has assumed other services like the forwarding charges or delivery and assembly.

2. If the dispatch or the taking of delivery is delayed or frustrated by circumstances beyond the control of the Company, then the risk shall pass to the Buyer on the date the notice of readiness for dispatch or taking delivery is received. The Company undertakes to take out the insurance the Buyer requests at the expense of the Buyer.

3. Part deliveries shall be admissible to the extent they are reasonable for the Buyer.

VI. Retention of Title

1. The Company retains title of the product until all payments under the contract for delivery and services have been received. The retention of title shall also remain in place with respect to all claims arising from ongoing business with the Buyer that are due to the Company. The final release of software licences, if any, shall be made after payment has been received in full.

2. The Supplier shall be entitled to insure the delivery item at the Purchaser's expense against theft, breakage, fire, water and other damage, unless the Purchaser has demonstrably taken out such insurance himself.

3. A Buyer with the respective industrial enterprise shall be entitled to resell or process the product within the ordinary course of their business. At this stage already, the Buyer assigns to the Company all claims and ancillary rights due to them from the resale and the business relationship with their customers in relation to such resale to secure the claims of the Company. The Company hereby accepts the assignment. The retention of title shall remain in effect even if the product should be processed, mixed or combined with other objects. The Company shall become the part owner of the products newly created by processing or mixing.

4. The Buyer is not authorised to any other disposition of the product. The Buyer is, however, entitled and obliged to collect the claims assigned to the Company as long as this authorisation has not been withdrawn. Upon request, the Buyer shall notify the Company immediately to whom they have resold the product and which claims have arisen to them from the sale.

5. Should any third party gain access to the retained goods, in particular by attachment, then the Buyer shall be obliged to refer to the title of the Company and notify the Company immediately, including all necessary data.

6. The Company shall be obliged to release the collateral due to the Buyer to the extent the realisable value of the collateral exceeds the claims to be secured by more than 10%, with the selection of the collateral to be released being at the discretion of the Company.

7. In the event of conduct on the part of the Purchaser contrary to the terms of the contract, in particular default in payment, the Supplier shall be entitled to take back the delivery item after issuing a reminder and the Purchaser shall be obliged to surrender it.

VII. Warranty, Liability

1. The warranty period for newly manufactured objects is 12 months, and for used, reconditioned objects 6 months. If acceptance is required, then the warranty period shall begin to run from and including the date of acceptance (as per acceptance protocol); if not, it shall begin to run from the passing of risk. If acceptance is delayed for reasons beyond the control of the Company, then – in case of deliveries within the EU and Switzerland – acceptance shall be deemed to be made within 4 weeks at the latest and - in respect to all other countries – within 8 weeks at the latest.

2. Upon delivery, the Buyer shall check without any undue delay whether the product is free of any defects. The Company shall be immediately notified in writing of any obvious defects, at the latest, however, within a week after the product was received; failure to comply shall result in a loss of guarantee.

3. Any other defects shall be notified to the Company within a week from becoming aware of such defects.

4. The Company shall be entitled to cure defects at the Company's option. This means the Company decides whether they will remove the defects or supply a replacement. If the cure fails, the Company shall be entitled to a repeated attempt at curing. In this case, too, it is at the Company's discretion to remove the defects or supply a replacement.

5. In accordance with the statutory provisions, the Company shall be liable for any damage resulting from loss of life, bodily injury or impaired health due to negligent infringement of duties on the part of the Company or willful or negligent infringement of duties of a legal representative or one of the people employed by the Company in the performance of their obligations, as well as in case of any other damage the liability for which is regulated under the ProdHaftG (German Product Liability Act). With respect to any other damage, the Company shall be liable in accordance with the statutory provisions, if such damage has been caused by willful or grossly negligent infringement of duties on the part of the Company or of a legal representative or one of the people employed by the Company in the performance of their obligations. In this case, liability shall be limited to the foreseeable, typically occurring damage, unless the Company, their legal representatives or people employed by the Company in the performance of their obligations acted willfully. Moreover, the Company shall be liable to the extent of the guarantee of quality and/or durability they have given. Any damage based on the lack of the quality or durability guaranteed which does not affect the product directly shall only lead to a liability of the Company, if the risk of such damage is explicitly covered by the guarantee of quality and durability. Any other claim shall be barred.

VIII. Limitation

All claims of the customer - on whatever legal grounds - shall become statute-barred after 12 months. This shall also apply to the limitation of recourse claims in the supply chain if the last contract in this supply chain is not a sale of consumer goods. The suspension of expiration remains unaffected. The statutory time limits shall apply to claims for damages. They shall also apply to defects in a building or to delivery items which have been used for a building in accordance with their usual use and which have caused its defectiveness.

IX. Software usage

Insofar as software is included in the scope of delivery, the customer shall be granted a non-exclusive right to use the delivered software including its documentation. It is provided for use on the delivery item intended for this purpose. Use of the software on more than one system is prohibited. The customer may only reproduce, revise, translate or convert the software from the object code to the source code to the extent permitted by law. The Purchaser undertakes not to remove manufacturer's details - in particular copyright notices - or to change them without the Supplier's prior express consent. All other rights to the software and the documentation including copies shall remain with the supplier or the software supplier. Sublicensing shall not be permitted.

X. Place of Performance, Place of Jurisdiction, Governing Law

1. The place of performance for all deliveries and payments shall be the head office of the Company.

2. Aschaffenburg shall be the place of jurisdiction for all claims resulting from this business relationship, if the Buyer is a merchant under the Commercial Code or a legal person under public law or a special fund under public law.

3. The Laws of the Federal Republic of Germany shall apply exclusively to the contractual relationship. Any application of the UN Sales Convention shall be barred.

XI. Final Provisions

The ineffectiveness of individual provision shall not affect the effectiveness of the remaining provisions. All declarations and statements affecting the effectiveness of the contractual relationship must be in writing. This shall also apply to any amendment of the requirement of written form itself.