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## General Terms and Conditions of Delivery and Payment of the WIDOS Company

State: 2002-04-01

### I. Conclusion of a contract / General terms

1. The following General Terms and Conditions of Delivery and Payment shall find use towards businessmen, legal entities under public law or a separate estate under public law. Businessman is every natural or legal person or an incorporated commercial partnership acting in the line of his commercial or independent personal activities at conclusion of the legal business. Said Terms and Conditions shall similarly apply to all future business transactions, irrespective of whether they have been referred to in the single case. For all business transactions consummated with final consumers, these said General Terms and Conditions of Delivery and Payment shall not apply to. In these cases, the legal regulations shall be applied.
2. Terms and Conditions of the customer which diverge from our Conditions without our expressive and written approval are non-committal for us even if we do not expressly contradict to them. At acceptance of our services, our Terms and Conditions of Delivery and Payment are considered to be accepted at the very latest.
3. Offers submitted by WIDOS shall be non-binding and subject to modification. A contract shall only be formed upon written confirmation of the customer's order on the part of WIDOS or upon delivery. Any orders and verbal agreements about said orders require our confirmation in writing. This shall also apply to supplements, amendments, verbal additional agreements on the basis of this Agreement or termination thereof.
4. Cost estimates of services which shall be carried out by WIDOS shall only be deemed as binding if such estimates have been submitted in writing and designated as binding. Cost estimates, drawings and other descriptive and illustrative documentation are protected by copyright and title to said documentation shall be retained by WIDOS without any limitation; it shall only be made available to third parties with previous consent of WIDOS and shall be returned to WIDOS without delay at the request of the latter in the case of non-placing the order. The sentences 2 and 3 shall be valid accordingly with regards to the documentation of the customer. However, said documentation may be made available to those third parties which WIDOS had charged with deliveries with permission.

### II. Prices

1. Our prices shall be valid in Euro ex works or warehouse of WIDOS, excluding VAT which is to be charged in accordance with the respectively valid statutory requirements, and excluding packing, freight, insurance and customs duties. In the case that WIDOS has taken over

installation and mounting, and that there is no differing agreement, the customer shall bear all necessary incidental expenses, such as travel expenses, freight charges of the tools, as well as accomodation allowances, besides the agreed consideration.

2. The prices shall be valid for four months beginning with the date of our confirmation of the order. If longer performance periods were agreed or if the customer is responsible for a delay of the delivery, WIDOS shall have the right to adjust the prices in the case of a subsequent change of the wages or of the material in the same ratio of the change of these said factors.
3. Services which are not expressly mentioned in our quotation but are necessary for the performance of the order or performed upon the demand of the customer, shall be charged according to the concrete expenses of wages or material. All fees and expenses which are connected with the satisfaction of requirements of public authorities at the place of installation shall be beared by the customer. This shall similiary apply to the preparation of prescribed documents for a permit or drawings.

### **III. Delivery / delay in performance**

1. Delivery deadlines and periods for the performance therof which may be agreed upon as binding or non-binding in effect shall be specified in writing. The customer may only request agreement upon a binding period for delivery and service if the extent of the works required have been accurately determined.
2. The performance period shall commence upon dispatch of the order confirmation by WIDOS, but not, however, prior to receipt of the documentation, material for examination and trials, authorisations, approvals or other explanations to be furnished by the customer. Similiary, it shall not commence prior to receipt of advance payment as agreed upon between WIDOS and the customer. Compliance with the performance period is subject to performance of the obligations and duties incumbent upon the customer under the terms of this Agreement. In the event of a subsequent amendment to the Agreement, in particular with regard to the scope of supply or service, so too the period of performance for the delivery/service shall be prolonged to a reasonable extent, unless otherwise expressly agreed upon in writing. The period of performance shall be deemed as complied if, prior to expiry of said period, the delivery item has been dispatched from WIDOS's premises or warehouse or if WIDOS has notified the customer that the item is ready for dispatch, transfer or for testing purposes if testing has been provided for under the terms of the Agreement, said latter in the case of the fabrication of a machine for special purposes.
3. The performance period shall be prolonged automatically for the period of the customer's delay of his obligations to us; this shall be valid respectively for performance periods for deliveries.

4. The performance period shall be prolonged to a reasonable extent if WIDOS is unable to comply with the period of performance as a result of force majeure and other unforeseeable and unusual circumstances which lie outside WIDOS' sphere of responsibility – for example difficulties in procurement of materials, operational breakdowns, strikes, lockout, deficiency in transport means, government regulations, difficulties in energy supply etc. In the event that the said circumstances change considerably the economic importance or the content of the delivery or that they influence in a considerable way the operation of WIDOS, the contract shall be adapted reasonably in good faith. If this is not economically reasonable, WIDOS shall be entitled to cancel the contract providing that WIDOS informs the customer without delay about the nonavailability and that WIDOS repays without delay any counter-performance in advance of the customer. In the event that the performance period for delivery is prolonged for the said reasons or that WIDOS is therefore relieved of the delivery commitment, the customer can not claim damages therefrom.
5. In the event that the impossibility of the in-time delivery is due to delays caused by our suppliers, which lie outside WIDOS' sphere of responsibility, both parties shall have the right to cancel the contract providing that the agreed date of delivery has been exceeded for two months. However, we shall only be entitled to do so in the case that we inform the customer about the delay as soon as possible and that we repay without delay any counter-performance in advance of the customer if the contract is cancelled.
6. Part deliveries shall be allowed to the extent considered reasonable to the customer.
7. If the performance is delayed by WIDOS, the customer may claim damage for each complete week of the delay of 0.5 % per week, but in total not more than 5 % of the price for that part of the delivery which could not be taken into relevant operation due to the delay – providing that he can substantiate his losses caused by said delay. This shall not apply to cases of force majeure according to point III, 4. If the customer intends to cancel the contract and/or to claim damages instead of the service performance, he must set WIDOS a reasonable deadline after expiration of the agreed period of delivery. If the customer has a claim for damages instead of the service performance, this said claim shall be limited to not more than 25 % of the agreed contract price in case of simple negligence – excluding the claims according to sentence 1 of this point.
8. The customer's claims for damages due to delay in delivery as well as his claims for damages instead of the service performance, exceeding the limits mentioned in point 7, shall be excluded in all cases of delayed delivery and after expiration of any deadline for delivery which the customer might have set to WIDOS. This shall not apply insofar WIDOS shall be binding liable in cases of intention, gross negligence, injury of life, body or health or if a procurement guarantee had been given. The customer may cancel the contract only within the scope of

legal provisions insofar WIDOS is responsible for the delay of the delivery. Any change of the burden of proof to the detriment of the customer is not connected with the preceding settlements.

9. The customer is under obligation to declare within a reasonable time upon demand of WIDOS whether he will cancel the contract due to the delay of the delivery and/or he will claim damages instead of the service performance or whether he insists on the delivery.
10. In the event that, at the customer's prompting, dispatch or delivery is delayed for more than one week after the notice that the item is ready for dispatch (e.g. due to not meeting agreed prepayments or due to mere inactivity), WIDOS may charge the customer for each begun week with storage charges in the amount of 0.5 % of the price of the objects of the delivery, but in total maximum 5 %. The contractual partners shall be free to prove higher or lower storage charges. Further claims due to default in accepting the delivery of the items shall be untouched.

#### **IV. Terms of payment**

1. Unless another term of payment has been explicitly arranged with the customer, all invoices are payable immediately without deduction. This shall also apply to part deliveries. Discounts or rebates shall not be deducted by the customer without prior written approval by WIDOS. Deduction of a discount is excluded unless all previous, outstanding invoices have been settled as well as in the case of payments by bills of exchange. Except as otherwise expressly agreed upon, WIDOS reserves the right to approve or reject bills of exchange, checks or similar instruments of payment on an ad hoc basis. The customer shall be charged in respect of discount and collection fees incurred. All such means and instruments of payment shall be accepted on account of performance only.
2. The customer shall default on payment latest upon a demand for payment by WIDOS, which is done at the date of maturity (see point 1). Even if WIDOS does not dun the customer, the latter shall be delayed, if the performance period is defined or may be defined by calendar or if the customer does not discharge a demand for payment within 30 days after maturity and receipt of an invoice or of an equivalent list of payments. In the event that the exact date of the reception of the invoice or of the list of payments is not clear, the customer is delayed latest 30 days after maturity and receipt of the item of service.

In the event of a delay of payment, we shall be entitled to demand 8 % interests over the base interest rate for the year. WIDOS' right to demand a higher interest rate for another legal reason or on the base of a concrete proof is untouched.
3. In the event that the customer defaults on payment for one of the present contracts for a period longer than 30 days or that he has suspended his payments or that there has been an

essential deterioration of his financial circumstances, our accounts receivable from all present contracts with the customer shall be due and payable immediately; any respites or other extensions of time for payment – also if WIDOS had accepted an acceptance – shall be ended immediately. For deliveries and services which had not yet been performed we may insist in that the customer furnishes security.

4. Any setoff with counterclaims as well as the rights of retention shall be excluded. This shall not apply to undisputed or legally effective counterclaims. Also the customer's right to urge a defense of nonperformance of contract shall be untouched.

## **V. Passing of risk and dispatch**

1. Even in the case of a delivery free of charge, the risk shall pass to the customer as follows:
  - a) In the case of delivery without installation or mounting: As soon as the item is sent off or is picked up. By request of the customer and to his charges, shipments shall be insured by WIDOS against the usual transport risks.
  - b) In the case of delivery with installation or mounting: At the date of taking-over into own operation or, insofar agreed to, after perfect trial operation.
2. In the event of delay of dispatch, delivery, starting, performance of installation or mounting, taking-over into own operation or trial operation for reasons that the customer is responsible for, or in the event of the customer's default in accepting the delivery of the items for other reasons, the risk shall pass to the customer.
3. Repair and other such services shall be performed at WIDOS' premises. The service item shall be delivered by the customer to WIDOS' premises at the expense of the former and collected by the same upon performance of the service. Should WIDOS undertake, at the request of the customer, to collect and deliver said item, all such transport services shall be performed at the expense and risk of the customer. Insurance cover shall not be provided in respect of service item for the duration of services performed at WIDOS' premises.
4. The customer is obliged to insure the service/delivery item against damage of all description. The customer must notify the last carrier in the event of complaints relating to transport immediately upon receipt of the consignment or the freight documentation.

## **VI. Installation and mounting**

Unless other agreements in writing, the following terms shall apply to installation and mounting:

1. The customer is obliged to perform and to provide in time at his own expenses:
  - a) all earth works, building activities and other additional works beyond the branch including the necessary skilled and support labours, building materials and tools,

- b) the items and materials which are necessary for mounting and starting the operation, such as scaffolds, lifting and other such devices, fuel and lubricants,
  - c) energy, water and, if need be, compressed air at the place of use including the connections, heating and lighting,
  - d) rooms at the place of mounting of sufficient size being suitable, dry and lockable for the storage of the machine parts, equipment, materials, tools etc. In addition, the customer has to take the same measures for the security of the property of WIDOS and of the service personnel on the building-site as he would do for the protection of his own property,
  - e) safety clothing and safety installations which are needed due to special conditions at the place of mounting.
2. Before starting of the mounting works, the customer has to provide WIDOS unasked the necessary information about the position of hidden current lines, gas- and water pipings or similar installations (e.g. cables for electronic data processing installations/telephone lines) as well as the needed data on statics.
  3. Before starting of the installation or mounting works, the necessary items which have to be at the disposal for starting the works must be at the place of installation or mounting and all preparatory works before starting the mounting must be advanced in such a way that installation or mounting may be started as agreed to or may be performed without interruptions. The ways for access and the place of installation and mounting have to be even and cleared.
  4. In the event that installation, mounting or starting the operation are delayed for circumstances which WIDOS is not responsible for, the customer shall bear the expenses for waiting time and additionally needed travels of WIDOS or of the mounting personnel to the extent considered reasonable.
  5. When WIDOS demands the final inspection upon faultfree completion, the customer has to undertake the latter within a period of two weeks. If this does not take place, the said final inspection shall be deemed as done. The final inspection also shall be deemed as done when the item – if applicable upon conclusion of an agreed test period – has been made use of.

## **VII. Warranty of quality**

1. We shall be liable in that the deliveries and services performed by us are free from redhibitory defects at the date of the passage of risk (point V), respectively, in the case of repair and maintenance works, at the date of the final inspection. WIDOS shall either retouch free of charge, deliver new or perform new all those parts or services at WIDOS' option which, within the limitation period – regardless of the service life - show a redhibitory defect, if the cause of latter had already been present at the date of the passage of risk, respectively, in the case of

repair and maintenance works, at the date of the final inspection. The redhibitory defect claims of the customer shall be statute-barred within 12 months. This shall not apply in case of longer statutory time limits according to § 438 clause 1 No.2 BGB (buildings and corporeal things for buildings), § 479 clause 1 BGB (claims for indemnification of the contractor) and § 634 a clause 1 No.2 BGB (buildings and planning and surveillance services for them) as well as in cases of injuries of life, body or health, in cases of intentional or grossly negligent breach of duty through WIDOS and in cases of malicious silence with regard to a defect. For claims according to the product liability law, the statutory requirements shall be valid. The statutory requirements on suspension of the statute of limitations, suspension and re-start of prescriptions shall be untouched.

2. Replaced parts pass to WIDOS' property. The customer is obliged to send the replaced part to WIDOS or to keep said part.
3. In the event of a mutual commercial business, the customer is obliged to fulfil his duty of immediate examination and lodging of a complaint according to § 377 HGB at apparent defects.
4. Only upon failure of the re-discharge (point 1) in reasonable time, the customer shall be entitled to demand a reduction (lowering) of the purchase price, to cancel the contract, or to claim damages instead of service performance in accordance with the points 9 and 10. This limitation shall not apply to in the event that the demand for re-discharge is not reasonable for the customer by way of exception. The re-discharge shall be deemed being a failure upon the unsuccessful second try if, particularly due to the nature of the item or of the defect, another result arises. WIDOS shall notify the customer when the try of re-discharge is completed.
5. In the event that the re-discharge requires unreasonable expenses, WIDOS may demand that the customer's rights of reduction, withdrawal from contract or to claim damages instead of service performance in accordance with the points 9 and 10 shall be limited. Claims of the customer to expenses which have become necessary for the purpose of re-discharge, particularly transport, travel, working and material costs, shall be excluded insofar the expenses are increased for the reason that the item of delivery had subsequently been brought to another place than the branch of the customer, unless this change of place is in accordance with the contractual usage. Claims of the customer to expenses which have become necessary for the purpose of re-discharge, particularly transport, travel, working and material costs, shall always be excluded insofar the expenses are increased for the reason that the item of delivery is not located in Germany.
6. Redhibitory defect claims shall not apply to cases of only insignificant divergences from the agreed quality, of only insignificant impeding of the usability, of normal wearing or damages resulting after passing of the risk (point V) from faulty or negligent handling, excessive stress, unsuitable operating material, faulty building activities, unsuitable building ground or from

particular environmental influences which are not assumed in the contract. This shall similarly not apply to reproducible software errors. In the event of unexpert changes or repair works performed by the ordering customer or a third party, defect claims with reference to said actions or their consequences are excluded similarly. A change of the burden of proof to the detriment of the customer is not connected hereto. WIDOS shall not be liable for the quality of the product subject to the construction or the selection of the material in the event that the ordering customer had prescribed the said construction or material.

7. In the event that the customer asserts redhibitory defects, he shall only retain payments to an extent being in a reasonable proportion to the asserted defects. If the customer's complaint comes out to be unlawful, WIDOS shall be entitled to demand compensation for the arisen expenses.
8. The customer shall only have rights of recourse in accordance with § 478 BGB against WIDOS (so-called recourse of the businessman) as far as the customer has not reached agreements with his purchaser exceeding the statutory demands for claims. Further to the extension of the customer's right of recourse against WIDOS in accordance with § 478 clause 2 BGB, point 5 sentence 2 shall apply respectively.
9. In the case of damages due to injury of life, body or health going back to negligent or intentional violation of duties through us or through one of our lawful representatives or vicarious agents, the customer may claim damages from us. This shall similarly apply to other damages if said damages go back to gross negligent or intentional violation of duties through us or through one of our lawful representatives or vicarious agents.
10. In the event of only ordinary negligence and if there is no injury of life, body or health, the customer may even claim for damages instead of service performance at redhibitory defects – further claims for damages being excluded. The height of said claim for damages, however, is limited to the damage typical for the contract and expectable resulting from the violation of essential duties from the contract. However, WIDOS shall not be liable for defects caused simple negligently by a defect of the item for delivery or service performance. In case of simple negligence, the compensation in pure economic losses, particularly loss or reduction of production or lost profits, is additionally limited by the general principles of equity and fair dealing, e.g. in cases of unreasonable high contractual compensation with respect to the height of damage. In case of simple negligence, for each claim no compensation higher than € 5.113.000,- for damages to property as well as € 52.000,- for economic losses can be demanded for. The liability of WIDOS for the loss or the faulty treatment of data in case of simple negligence is beyond that limited to reproduction expenses at availability of backup copies. The customer is obliged to make backup copies of the data stored prior to dispatch of the repair or service item.



A change of the burden of proof to the detriment of the customer is not connected hereto.

11. The liability according to the law of product liability is not affected by the rules listed in point 10. Independent from a fault of WIDOS, any liability beyond that resulting from giving a guaranty or from assuming a procurement risk shall be untouched.

#### **VIII. Deficiencies in title**

In the event of deficiencies in title, the rules on redhibitory defects in accordance with point VII shall apply respectively.

#### **IX. Impossibility**

Insofar the delivery or other performance of the services is impossible, the customer may claim WIDOS for demands, providing that WIDOS shall not be responsible for the impossibility. However, the height of the claim for damages is limited to 10 % of the value of that part of the delivery which can not be taken into relevant operation due to the impossibility. This limitation shall not apply in cases of intention, gross negligence or of binding liability due to injury of life, body or health, or if WIDOS has given an according guaranty or if WIDOS has assumed a procurement risk. A change of the burden of proof to the detriment of the customer is not connected to the preceding rules. The customer's title to cancel the contract shall be untouched.

#### **X. Other claims for damages**

1. The customer may not claim WIDOS for damages going beyond the claims regulated in points III, 7 (delay), VII 9 and 10 (redhibitory defects), VIII (deficiency in title) and IX (impossibility), independent from the rule of law. However, this rule shall not apply to binding statutory liability, so in cases of intention, gross negligence, due to injury of life, body or health, if a guaranty had been given or if a procurement risk had been assumed, as well as in cases of liability according to the law of product liability. Claims for damages shall similarly not be excluded in the case of violation of essential duties from the contract by WIDOS. In said latter case – and if an injury of life, body or health or a guaranty or assumed procurement risk is simultaneously excluded – the height of the claim for damages is limited according to point VII 10, sentences 2 and 4 - 7.

A change of the burden of proof to the detriment of the customer is not connected to the preceding rules.

2. If the customer is entitled to claims on damages according to point 1, these said claims shall be strucked by the statute of limitations upon exceeding of the period of limitation valid for claims for redhibitory defects according to point VII, 1.

3. Claims for the compensation of wasted expenses are excluded to the extension of binding statutory liability (see cases in point 1 sentences 2 and 3). Point 2 shall respectively apply to the limitation of liability in time.

#### **XI. Extended lien**

Should repair or other services be performed, WIDOS shall, in respect of claims arising in connection with the agreement, enjoy a right of lien by agreement on objects to which WIDOS has gained possession on the basis of the order in question. Such lien by agreement may also be asserted in respect of claims arising in connection with work performed at a previous date, spare parts deliveries and other services, to the extent that the aforementioned pertain to the item in question. The lien by agreement shall only apply to other claims arising during the course of business relations to the extent that such claims are uncontested or a legally-binding title exists or the relevant item is in the property of the customer.

#### **XII. Retention of Title**

1. WIDOS shall retain title to all delivered items pending complete settlement of all debt claims resulting from the business relation, including all subsidiary claims (among others all balance claims on current account), and pending payment of the bills and checks made out hereto.
2. The retention of ownership shall apply to the products of treatment, but the customer shall be entitled to treat and to resell the product during the course of normal business transactions, insofar that the debt claims resulting from processing and reselling are assigned to us. Any obligation on our part resulting from the treatment shall not entail. In the event of processing, connecting or blending our product subject to retention with another material, we shall acquire an ownership interest in the ensuing object in a pro rata basis determined by the value of the delivery item in relation to the value of the other goods at the date of treatment and processing. The transfer of possession shall be replaced by that the customer holds the products gratuitously in safe custody for us with the diligence of a careful mercantile trader. For the new products of treatment or processing, the said rules shall apply to as they do for the products subject to retention. They shall similarly be deemed products subject to retention in the sense of these said conditions.
3. The customer shall already at this moment assign to us all claims receivable from the sale of goods subject to our title of ownership – if the case arises in the amount of our rate of co-ownership of the sold goods – to secure all our claims from the business relationship. This

shall apply independent if the item subject to retention is sold without or after processing, and if it is sold to one or several purchasers.

4. In the event that the customer does not or not in accordance with the contract render the matured services he is liable for (particularly the payment), we may cancel the contract upon having set a reasonable deadline without success and oblige the customer to surrender possession of the delivered item.
5. We shall be obliged to release the securities we are entitled for and being subject to our selection, on demand of the customer, provided that the realizable value of said securities exceeds 20 % of our debt claims which are subject to the security.
6. Upon complete payment of the debt claims of the delivered item, the title of property of the item subject to retention passes immediately to the customer and he shall be entitled to the assigned claims.
7. The customer is not entitled to pledge or assign the delivered item subject to retention by way of security. In the event of attachment or any other encroachment by a third party, the customer must notify us immediately (including a copy of the order of attachment); the charges of interventions shall be beared by the customer.

### **XIII. Assignability of titles**

The customer shall only have the right to convey his contractual titles in total or in parts to third parties upon prior written permission of WIDOS. The need of said permission shall be dispensable in the case of assignment of monetary claims.

### **XIV. Secrecy**

All information about business or technical data obtained from us shall be governed by secrecy against third parties, as long and insofar said information is not verifiably publicized or has been intended by us for resale through the customer. Evenly, the customer is only entitled to make available this said information to such persons in his own company who need to be mobilized for the usage thereof. Without our prior written permission, such information may not be duplicated or used commercially. Upon our demand, all information obtained from us (if the case arises including produced copies) and all objects the use of which having been permitted on loan must immediately be either returned to us or destructed.

### **XV. Place of performance and place of jurisdiction**

1. The registered office and principle place of WIDOS shall be the place of performance for both contracting parties for all obligations incurred in connection with this agreement.

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2. Place of jurisdiction for all demands arising in connection with the contractual relationship between the parties, claims based on bills of exchange and checks included, shall be the registered office and principle place of WIDOS, vis-à-vis business people, legal entities under public law or separate estates under public law.
  3. This Agreement shall be governed and construed in accordance with the laws of the Federal Republic of Germany. Application of uniform laws on sale of goods, particularly of the CISG (United Nations Convention on Contracts for the International Sale of Goods) , is hereby excluded.

**XVI. Partial invalidity**

Should one of the provisions of these Terms and Conditions be or become invalid, the validity of the remaining terms or agreements shall remain unaffected thereby. On the contrary, that provision competent in law shall be deemed agreed instead of the invalid rule, which comes closest to the content of the said invalid provision.

These General Business Terms and Conditions have been translated from German to English. In cases of lack of language clarity or difficulties in interpretation, the German version of these Terms and Conditions is deemed relevant.