

General Terms and Conditions of Delivery (GTCD)

1. Applicability and effect

These General Terms and Conditions of Delivery (hereinafter, "GTCD") of Wild & Küpfer AG (hereinafter, "W&K") shall apply to all deliveries and services of W&K, provided that reference is made to these GTCD in the contract with a customer or in W&K's order confirmation.

The contractual relationship between W&K and the customer shall be based in descending hierarchical order on (1) the project contract or the contract for series delivery, (2) the written order confirmation of W&K, (3) the GTCD and (4) the Swiss Code of Obligations (Obligationenrecht, "OR").

Deviations from these GTCD must be made in writing. In particular, the acceptance of other general terms and conditions (for example, SIA standards, terms and conditions of purchase or other general terms and conditions of the customer) shall only be binding if they are expressly stated in the written order confirmation. In the event of conflict, these GTCD shall prevail.

In any case of doubt, the German language version of the GTCD shall take precedence over the English language version.

If a provision of these GTCD proves to be wholly or partially invalid or void, this provision shall be replaced by a new provision that comes as close as possible to its legal content and economic purpose.

2. New projects

2.1. Concept

A new project is understood to be a contractual relationship between W&K and the customer, within the framework of which W&K develops a product and/or tool according to the customer's wishes and – in the case of a product – makes it ready for series production.

2.2. Subject matter and handling

The project organization, which is defined by the parties at the beginning of the project, forms a component of the project contract. This applies in particular to the definition of the specifications and general conditions of the product/tool. A certain output quantity is guaranteed only if it is agreed upon when the tool is ordered or at the beginning of series production.

Changes to the specifications and the general conditions for the product/tool to be developed shall be agreed in writing. Before implementing the changes, W&K shall inform the customer of the extent to which the changes will affect the schedule and costs.

The completion of the new project shall be initiated by W&K's notification that the development is completed and the product (prototype or pilot series) is ready for release for serial production by the customer. Subsequently, the product shall be tested jointly by the customer and W&K.

If such test shows that the agreed specifications and general conditions are met, the product shall be released for series production and the new project shall be completed. The same shall apply if the customer refuses to cooperate with the test within 30 days of notification.

Upon the completion of the new project and the release for series production, the phase of series deliveries shall commence.

2.3. Development costs

Development costs comprise all expenses incurred by W&K in the new project, such as costs for labor, infrastructure and the manufacture of tools, auxiliary materials and test equipment. The parties shall agree in the project contract on how the development costs are to be settled.

The project contract shall also govern the price (including currency) for the output quantity. Prices shall be EXW W&K factory (INCOTERMS 2020), excluding VAT and packaging. The customer shall be liable for all types of taxes, duties, fees, customs duties and the like. The terms of payment pursuant to Section 4.2 shall apply.

3. Series delivery

3.1. Concept

Series delivery is understood to be a contractual relationship between W&K and the customer, in the framework of which W&K manufactures and delivers a product with defined specifications for the customer. The product may have been developed in advance by W&K, the customer or third parties.

3.2. Product

The product specification shall be made in writing by W&K. Warranted characteristics shall be those contained in the product specification in the order confirmation.

3.3. Price

Prices shall be EXW W&K factory (INCOTERMS 2020), excluding VAT and packaging. The customer shall be liable for all types of taxes, duties, fees, customs duties and the like.

The currency of the price owed shall be specified in the written order confirmation.

Agreed prices shall be valid for the quantity and/or the period of time specified in the agreement. In the absence of any express agreement, the prices for the first delivery shall apply. If the specified quantity or the agreed period of time is exceeded, W&K shall be entitled, in the event of an increase in the cost of materials or wages, to add a surcharge for the cost increase that has occurred on the basis of the original price calculation.

The terms of payment pursuant to Section 4.2 shall apply.

3.4. Handling

If call orders are agreed for specific periods of time, the total volume of which is called for in parts, the customer shall be obligated to call for the total volume within one and a half times the agreed period at the latest. If the total volume is not called for within this extended period, W&K shall be entitled to invoice the part not called for at the end and to store the products at its discretion and at the expense of the customer, either at its own premises or those of third parties.

4. Common provisions for new projects and series deliveries

4.1. Order confirmation

Offers made by W&K shall be subject to change without notice and shall merely constitute an invitation to the customer to submit a corresponding offer to W&K for the entering into of a contract. A contract shall only be concluded upon a written order confirmation by W&K. The order confirmation shall be solely decisive for the scope and execution of the delivery.

Unless the customer objects in writing to W&K within 5 working days after dispatch of the order confirmation, the contract and in particular the respective specifications shall be deemed binding.

Changes to purchase orders or cancellations after the expiration of the aforementioned period of 5 working days shall only be binding on W&K if W&K agrees to them in writing. The customer shall bear the additional costs incurred due to a change to a purchase order. Reduced costs shall be credited to the customer.

4.2. Terms of payment

The specifications in the order confirmation shall apply. The invoice amount shall be due net (without any deductions) within 30 days of delivery or invoicing (expiration date). If the customer does not meet agreed payment deadlines, it shall pay interest of 5% p.a. from the date of the agreed due date, without any reminder. The assertion of higher damages remains reserved.

The payment deadline shall also be met if the collection or receipt, as the case may be, or the acceptance of the product by the customer is delayed for reasons for which W&K is not responsible.

If the customer is in arrears with earlier payments or if W&K has to seriously fear, due to other circumstances, that the customer's payments will not be settled in full or on a timely basis, W&K shall be entitled to make the delivery of ordered products dependent on advance payments or the granting of security.

W&K reserves the right to make the acceptance of a purchase order above an order volume to be determined by W&K at its sole discretion subject to the agreement of a reasonable advance payment, which shall be invoiced and due for payment immediately after order confirmation by W&K.

4.3. Delivery

The written order confirmation shall be decisive for the delivery. Brochures and catalogs shall not be binding, unless otherwise agreed. Details in technical documents shall only be binding to the extent that they are expressly guaranteed in the order confirmation.

W&K shall develop and manufacture products that comply with the regulations applicable in Switzerland and the EU, provided that the customer informs W&K of the intended purpose and the location of deployment within Switzerland or the EU. The customer shall be obligated to assist W&K in identifying the applicable foreign regulations if so requested by W&K.

If customer wishes the products to be developed or produced to comply with other regulations, it shall be incumbent on it to specify such regulations in detail to W&K at the beginning of the project or the supply relationship.

W&K shall check the delivery, to the extent customary, prior to dispatch. Any further tests requested by the customer must be separately ordered and paid for by the customer.

4.4. Delivery date

W&K shall comply with the date for provision of the product as stated in the order confirmation. The dates shall be postponed appropriately if W&K does not receive the information required by W&K for the performance of the contract on a timely basis or if the customer subsequently modifies such information, thereby causing a delay, or if the customer or third parties are in arrears with the work to be performed by them or with the performance of their contractual obligations, in particular if the customer fails to comply with the terms of payment. Events of force majeure according to Section 4.6 are reserved.

If W&K is in default of performance, the customer may grant W&K a grace period of at least 4 weeks and withdraw from the contract if the grace period expires without being used.

Should the customer withdraw from the contract, W&K shall be liable for damages incurred by the customer after the expiration of the grace period, to the extent that the customer can prove intent or gross negligence on the part of W&K.

Any further claims by the customer in the event of default on the part of W&K shall be excluded.

4.5. Ownership and maintenance of tools

Tools that the customer provides to W&K shall remain the property of the customer. The maintenance of tools that are the property of the customer shall be governed separately. In the absence of any such provision, the customer shall be responsible for maintenance.

W&K shall be responsible for the maintenance of the tools owned by W&K. However, W&K shall not be obligated to procure a replacement at its own expense if the tool has to be replaced due to normal wear and tear.

W&K warrants to the customer that tools financed by the customer will only be used for production for the customer. Any use for third parties shall require the express consent of the customer.

4.6. Force majeure

Delays, postponements and/or the impossibility of W&K's deliveries and services due to an event of force majeure shall not be deemed a breach of contract or default by W&K for the duration of the disruption along with a two-week transition period after the disruption has ended. Force majeure shall include all unforeseen events of a factual or legal nature that impede or make impossible the execution of the contract and that are not caused by W&K. Force majeure shall include in particular unforeseen operational, traffic, shipping or delivery disruptions, riots, natural disasters, fire damage, epidemics, pandemics, shortages of energy, raw materials and supplies, lack of manpower, strikes, lockouts, official orders and decrees. W&K shall inform the customer as far as possible without delay of the occurrence of an event of force majeure and of the anticipated duration of the disruption to performance.

If only a partial delivery is delayed or prevented by an event of force majeure, W&K shall be obligated to deliver and the customer shall be obligated to accept the partial delivery not affected by the impediment.

If it is foreseeable that the execution of the contract will take longer than 3 weeks due to an event of force majeure that prevents W&K or the customer from fulfilling the contract, W&K shall be entitled to withdraw from the contract. The customer shall have no claims arising from such withdrawal.

4.7. Transfer of risk

Benefits and risks shall pass to the customer when the product is made available to the customer at W&K's factory. W&K shall inform the customer when the product is ready for collection.

If dispatch is delayed at the request of the customer or for other reasons for which W&K is not responsible, the risk shall pass to the customer at the time originally intended for provision. From this time on, the deliveries shall be stored and insured on the account and at the risk of the customer.

4.8. Warranty and liability

W&K shall warrant that the goods are free of defects at the time of provision and that the scope of delivery corresponds to the order confirmation. The warranty for faulty material specified by the customer shall be excluded. Furthermore, W&K shall warrant that the goods have the properties assured in the written order confirmation. Defects of the delivered products, which are the result of improper handling, use, storage, transport or processing by the customer, are not covered by this material warranty.

The warranty period shall be 12 months from the time of the provision of deliveries at W&K's factory.

It is the customer's responsibility to inspect the delivered products within 10 working days after provision for the conformity of the product with the contract and for visible defects, and to provide immediate written notification of any defects found. The customer shall notify W&K in writing of any defects that become apparent later and that were not recognizable by the customer upon receipt of the product and that could not have been detected even if the inspection had been carried out with all due care (so-called "hidden defects") within 5 working days of their discovery. If the customer fails to carry out the inspection and/or submit a written complaint, it shall forfeit its rights in respect of defects.

If the customer provides notification of defects within the warranty period in accordance with the preceding provision, the products notified as defective shall be delivered to W&K at the latter's request and in accordance with the terms of delivery specified by W&K. W&K shall be obligated to replace or repair, at its discretion, the defective products delivered by W&K. W&K shall bear the costs of shipping the replacement products in accordance with W&K's terms of delivery. The customer shall not be entitled to any further claims upon the presence of defects. In particular, it shall not be entitled to reject entire deliveries if individual items have proven to be defective.

For replaced or repaired parts, the warranty period shall start anew and last 12 months from replacement or completion of the repair.

The warranty shall expire prematurely if the customer or third parties carry out modifications or repairs or if the customer, in the event of a defect, does not immediately take all suitable measures to reduce the damages.

W&K shall be liable to third parties for damages resulting from defects of the delivered products in accordance with the applicable statutory provisions regarding product liability. If W&K is sued by a third party on the basis of such statutory provisions, the customer shall be obligated to support W&K to the extent necessary. In addition, the customer shall indemnify W&K if W&K is sued under product liability law, even though the damages arising under product liability law are not due to a defect in W&K's product that existed at the time of delivery to the customer. In such a case, the customer shall bear all costs and expenses, including the costs of legal representation or a recall. The following procedure shall also apply: Within 10 days of becoming aware of the initiation of arbitration proceedings, W&K shall notify the customer of the dispute in accordance with Art. 78 of the Swiss Code of Civil Procedure (Zivilprozessordnung, "ZPO"), and shall declare in writing that it agrees to the customer conducting proceedings in its place (Art. 79 (1)(b) ZPO). Unless otherwise individually agreed, the customer shall be obligated to conduct the proceedings (including any appeal proceedings) at its own expense and risk. The customer thus also assumes the risk of procedural costs (court costs and party compensation) entirely at its own expense.

4.9. Exclusion of further liability

In the event that the customer has any claims arising from or in connection with the contract or its improper performance, the total amount of such claims shall be limited to the price paid by the customer.

All cases of breach of contract and their legal consequences along with all claims of the customer, regardless of the legal grounds on which they are made, shall be conclusively governed in these terms and conditions. In particular, all claims for damages, reduction, cancellation of the contract or withdrawal from the contract by the customer are excluded. Under no circumstances shall the customer be entitled to claim compensation for damages that have not occurred to the delivery item itself, such as loss of production, loss of use, loss of orders, recall costs, lost profits or other direct or indirect damages. Moreover, liability for the compensation of claims of third parties, which are asserted against the customer due to a violation of intellectual property rights, is excluded.

This exclusion of further liability on the part of W&K shall not apply in the event that customer can prove intent or gross negligence on the part of W&K.

4.10. Default of acceptance

If the customer is in default of acceptance, W&K shall be entitled to demand compensation for any expenses incurred. In particular, a surcharge for additional expenses (storage costs, etc.) shall be levied on products that are not collected by the customer on time starting on the third day after the unused collection date.

In all other respects, W&K may proceed under Art. 91 et seq. OR.

If the risk of accidental deterioration and accidental loss has not previously been transferred to the customer in accordance with the preceding provisions, this shall be the case at the latest when default of acceptance occurs.

4.11. Intellectual property

W&K shall retain the intellectual property rights to results, drawings, ideas or findings that W&K creates or makes in the course of a new project or series delivery. In particular, W&K shall be entitled to apply for industrial property rights to inventions at its own expense.

The intellectual property rights to documents and information exchanged between the parties in the course of the business relationship shall remain with the party that provides them to the other party.

The customer warrants to W&K that it holds the copyrights and other intellectual property rights to the work results and materials provided by it and its auxiliary persons, such as in particular drafts, drawings, ideas or findings. If, nevertheless, mandatory or absolute rights, such as in particular patent, copyright, design or trademark rights of third parties, are infringed, the customer shall indemnify W&K. In such a case, the customer shall bear all costs and expenses, including the costs of legal representation. The following procedure shall also apply: Within 10 days of becoming aware of the initiation of arbitration proceedings, W&K shall notify the customer of the dispute in accordance with Art. 78 ZPO, and shall declare in writing that it agrees to the customer conducting proceedings in its place (Art. 79 (1)(b) ZPO). Unless otherwise individually agreed, the customer shall be obligated to conduct the proceedings (including any appeal proceedings) at its own expense and risk. The customer thus also assumes the risk of procedural costs (court costs and party compensation) entirely at its own expense.

4.12. Secrecy

All business or technical information made accessible by W&K (including features that can be inferred from any objects, documents or software handed over and other knowledge or experience) shall be kept secret from third parties as long as and to the extent that it is not public knowledge, and may only be made available in the customer's own operation to such persons who must necessarily be involved in its use and who are also obligated to maintain secrecy; it shall remain the exclusive material and intellectual property of W&K.

Such information may not be reproduced or used commercially without the prior written consent of W&K. At W&K's request, all information originating from W&K (including any copies or recordings made, if applicable) and any items provided on loan shall be returned to W&K immediately and completely, or destroyed. W&K reserves all rights to such information (including copyrights and the right to apply for industrial property rights such as patents, utility models, etc.).

4.13. Export control

The customer acknowledges that the deliveries may be subject to Swiss and/or foreign statutory provisions and regulations regarding export control and, without an export or re-export license issued by the competent authority, may not be sold, rented or otherwise transferred or used for any purpose other than the agreed purpose. The customer shall be obligated to observe such provisions and regulations. It acknowledges that these may change and are applicable to the contract in their currently valid wording.

4.14. Retention of title

W&K shall retain title to all delivered products until the full price has been paid.

Upon entering into the contract, customer shall authorize W&K, at the customer's expense, to enter or note the retention of title in public registers or the like, and to comply with all formalities relating thereto.

The customer shall be obligated to maintain the delivered products at its own expense for the duration of the retention of title, and to insure them in favor of W&K against theft, breakage, fire, water and other risks. Furthermore, the customer shall take all measures to ensure that W&K's claim to ownership is neither impaired nor rescinded.

4.15. Prohibition on assignment, pledging and offsetting of receivables

Without the prior written consent of W&K, the claims to which the customer is entitled may not be assigned, pledged or set off against counterclaims. The customer declares that there are no previous assignments or pledges of its claims arising under this contract.

4.16. Legal succession

W&K shall be entitled to transfer rights and duties arising from the contractual relationship with the customer to another company. The customer shall not be entitled to terminate the contract on the grounds of such transfer.

4.17. Prohibition on refusal to perform by the customer

The customer shall not be entitled to reduce or withhold its payments or invoke Art. 82 OR based on any differences in connection with this contract or due to a delay in delivery by W&K.

4.18. Area of jurisdiction

The exclusive area of jurisdiction for all disputes arising from or in connection with this contract shall be the registered office of W&K or, at its discretion, another competent place of jurisdiction. The ordinary courts of law shall have jurisdiction for the judicial assessment of disputes.

4.19. Applicable law

This contract is subject to Swiss law, to the exclusion of the rules of international private law and the Vienna Convention (CISG).

Schmerikon, April 2020