

I. General remarks and scope

1. The present terms apply to all business transactions entered into by Würth Industrie Service GmbH & Co. KG ("Würth" in the following) and their customers ("customer" in the following). These terms apply only if the customer is an entrepreneur within the meaning of Section 14 of the German Civil Code (Section 14 BGB), a public law entity or a special fund under public law.
2. These terms shall apply exclusively to all business transactions. Any conflicting or diverging terms and conditions of the customer will not be recognized by Würth, unless their application was expressly agreed to by Würth. The present terms shall apply even if Würth effects delivery to the customer without reservation while being aware of such conflicting, diverging or supplementary terms of the customer.
3. Notwithstanding anything to the contrary contained herein, separate, individual agreements concluded with the customer shall take precedence over the provisions in these terms. Such individual agreements require written form and/or Würth's written confirmation to be effective.
4. Any legally relevant representations and notices to be made to Würth by the customer after conclusion of the contract (incl. deadlines or grace periods, notices of defects, revocation of the contract or price reductions) need to be made in writing to be effective.
5. References to statutory provisions are for clarification purposes only. Even without such references, legal regulations and statutory provisions generally apply without limitation unless they are expressly changed or excluded in these terms.

II. Conclusion of a contract

1. Würth's offers are without engagement. This provision also applies if Würth provides the customer with catalogs, technical documentation or other product information and documents subject to retention of title and copyrights.
2. The placing of an order by the customer constitutes a binding offer to conclude a contract. Unless otherwise specified in the order, Würth may accept the customer's contract offer within 4 weeks upon receipt of the order.
3. Delivery contracts only enter into force upon written acceptance or shipment of the goods at the latest. Transmitting acceptance via telecommunications shall be deemed written acceptance.
4. In the event Würth uses a telecommunications or other electronic media service to conclude a contract, the customer hereby waives his right to appropriate, effective and accessible technical means for the detection and correction of type errors, disclosure of the information specified in Art. 246, Sec. 3 EGBGB (German Introductory Act to the Civil Code) and to a confirmation of receipt of the order. Any electronically transmitted order shall not be deemed received until downloaded and opened by Würth.

III. Prices - terms of payment

1. All prices are quoted ex warehouse and subject to VAT at the rate in effect at the time the invoice is issued.
2. In the event of a sales shipment (Section VI, paragraph 1), the customer shall bear all shipping costs ex warehouse and any transport insurance fees if an insurance is requested by the customer. Any customs duties, fees, taxes and other public charges are borne by the customer. To the extent permitted by the German Packaging Ordinance (VerpackV), Würth does not take back any transport or other packaging, which becomes property of the customer. This does not include pallets.
3. In the event Würth agrees to take back goods which have already been delivered, Würth may charge a restocking fee of up to 20 % of the value of the goods to be restocked (agreed gross purchase price) for the additional expenses incurred, but no less than EUR 15, unless the customer has a legal right to return the goods.
4. Würth charges a minimum quantity surcharge for small orders with a delivery value of less than EUR 150.
5. Unless agreed otherwise, the agreed purchase price is due and payable within 20 days of the invoice date. Würth grants a cash discount of 2 % of the gross invoice amount on all payments within 10 calendar days. Should a contract have a delivery value of more than EUR 5,000, Würth may demand a down payment of 30 % of the purchase price. The down payment is payable within 20 calendar days of the invoice date.
6. Regardless of the means of payment, payment shall be deemed received on the date Würth can dispose of the amount due.
7. The customer is considered to be in default once the payment term specified in paragraph 5 expires. In the event of default, the customer will be charged late-payment interest at the current applicable rate. Würth reserves the right to make additional claims for losses caused by default. Any claim to commercial maturity interest within the meaning of Section 353 of the German Commercial Code (HGB) remains unaffected by the above provisions.
8. The customer may only claim a set-off or exercise its right of retention to the extent that its claim is uncontested or has become res judicata. Nothing in these terms shall exclude any opposing rights the customer may have in the event of defective deliveries.
9. Should it become apparent after conclusion of the contract that Würth's claim to the purchase price is jeopardized by the customer's inability to perform (e.g. the customer files for bankruptcy); Würth may refuse performance and - after setting a reasonable grace period - revoke the contract in accordance with statutory requirements (Section 321 BGB). Subject to the statutory provisions on the immediate revocation of a contract, Würth may revoke a contract governing the production of unmarketable items (products made to specification) with immediate effect.
10. Provided there are already outstanding claims for payment under the ongoing business relationship with the customer, Würth may refuse further deliveries until the customer has settled all claims in full. The above provision applies mutatis mutandis to any credit lines granted by Würth.

11. If the customer fails to pay the outstanding purchase price even though payment is overdue, this failure will be reported to the credit agencies working with Würth in accordance with Section 28a of the German Federal Data Protection Act (BDSG).

IV. Retention of title

1. Würth will retain legal ownership of the goods sold until full payment is received for all present and future claims arising out of the corresponding sales contracts and the current business transaction ("secured claims" in the following).
2. Any goods subject to retention of title may not be pledged or offered as security to third parties by the customer until all secured claims have been paid in full. The customer shall notify Würth immediately of any attempt by third parties to seize such goods.
3. Any breach of contract on the part of the customer including, without limitation, non-payment of the payable purchase price, shall authorize Würth to revoke the contract in compliance with statutory provisions and demand the return of the goods sold on the basis of the retention of title and Würth's revocation of the contract. If the customer fails to pay the payable purchase price, Würth may only exercise the aforementioned rights after having set a reasonable grace period unless such a grace period can be dispensed with in accordance with statutory requirements.
4. The customer may resell and/or process the goods subject to retention of title in the ordinary course of business. In this case, the following supplementary provisions apply.
 - (a) Würth retains title to the goods supplied even though they have been processed, blended or combined in such a way that they now form part of or are converted into a new product, whereby Würth shall be considered as manufacturer. In case proprietary rights of third parties continue after such processing, blending or combination, Würth acquires joint title to the new product in proportion to the invoice values of the processed, blended or combined goods. In all other respects, the same provisions that apply to the goods delivered subject to retention of title shall also apply to the new product.
 - (b) Any claims against third parties arising out of the resale of Würth's goods or the newly created product shall be considered assigned to Würth by the customer by way of security either in full or in proportion to the value of the joint title as specified in the provisions above. Würth accepts the assignment. The contractual obligations of the customer contained in paragraph 2 shall also apply with respect to the assigned claims.
 - (c) The customer remains entitled to collect claims from resale. Würth shall not collect such claims as long as the customer meets its financial obligations, does not default on its payments, does not file for bankruptcy and as long as there is no other indication of the customer's inability to fulfill its contractual obligations. Should the customer fail to meet the above requirements, Würth may require the customer to disclose the assigned claims and the corresponding debtors as well as all information necessary to collect such claims, submit the necessary documents and notify the debtors (third parties) concerned of the assignment.
 - (d) In the event the realizable value of these securities exceeds Würth's claims by more than 10 %, Würth shall, upon request of the customer, release securities. Würth may choose the securities to be released at its own discretion.

V. Delivery periods, delivery dates, acts of God and delays in delivery

1. Delivery and/or performance periods and delivery and/or performance dates are agreed individually and/or specified by Würth upon acceptance of the order.
2. The beginning of the individually agreed or specified delivery or performance periods is subject to the successful clarification of all technical questions.
3. Würth's observation of the delivery or performance periods is further subject to the customer's due and timely compliance with all contractual obligations. Würth reserves the right to refuse performance in accordance with Section 320 BGB if the customer fails to render the agreed consideration.
4. Würth shall give the customer prompt written notice in the event of failure to or delay in performance of deliveries or other obligations by sub-suppliers or subcontractors, in whole or in part, despite appropriate congruent hedging transactions, due to circumstances beyond Würth's reasonable control or acts of God, i.e. obstacles to performance occurring without Würth's fault or negligence and lasting more than 14 calendar days. In this case Würth may delay performance of the delivery or other obligation by a period of time equal to the duration of the obstacle to performance or revoke the contract in whole or in part on the basis of the unfulfilled part of the contract as long as the above information requirement has been met and Würth has not assumed the procurement and/or production risk and the obstacle to performance is not temporary. Within the meaning of the above provisions, the following circumstances shall be deemed equivalent to acts of God to the extent these circumstances are beyond Würth's reasonable control and occur without Würth's fault or negligence: strike, lockout, government intervention, energy and raw material shortages, delivery bottlenecks, business interruptions (e.g. through fire, water and machine failure) and all other interruptions occurring without Würth's fault or negligence.
5. In the event a binding delivery and/or performance period and/or date has been agreed and is exceeded by more than four weeks due to the circumstances described in point 4 or the continuation of the contract would pose an unreasonable hardship on the customer in the event of a non-binding performance date, the customer may revoke the contract on the basis of the unfulfilled part of the contract.
6. Commencement of default in delivery on the part of Würth is subject to statutory provisions. Notwithstanding the above provision, a reminder by the customer is required for the commencement of default. In the event Würth defaults on a delivery, the customer shall be entitled to claim lump-sum compensation for damages caused by default. Such lump-sum compensation amounts to 0.5 % of the net purchase price for every full calendar week Würth is in default, but no more than 5 % of the net purchase price of the delayed goods. Würth reserves the right to establish that the customer did not incur any or significantly less damage than the amount covered by the compensation specified above.
7. The rights of the customer set forth in Section IX below and Würth's legal rights including, without limitation, the exclusion of contractual obligations (e.g. due to impossibility

of performance, unreasonable hardship and/or provision of a remedy) remain unaffected by these provisions.

VI. Delivery, transfer of risk, delays in acceptance

1. Delivery is effected ex warehouse, which is also the place of performance. Upon request and at the expense of the customer, the goods can be shipped to a different destination (sales shipment, Section 447 BGB). Unless otherwise expressly agreed, Würth may choose the method of shipping (including, without limitation, carrier, dispatch route and packaging).
2. Würth may perform partial deliveries, provided this does not have any negative consequences for the customer.
3. Würth reserves the right to deliver consumables in commercially standardized quantities, i.e. short or excess deliveries, provided these deliveries remain within reasonable bounds and do not conflict with the customer's interests.
4. The risk of accidental loss of or accidental damage to the goods passes to the customer when the goods are handed over to the customer. In case of a sales shipment, the risk of accidental loss of or accidental damage to the goods as well as the risk of delay already pass to the customer upon delivery of the goods to the forwarder, carrier or other third party authorized to collect the goods. In the event of default of acceptance, the risk shall pass to the customer upon default.
5. In case the customer is in default of acceptance, fails to cooperate or is otherwise responsible for delaying Würth's delivery, Würth may claim compensation for the damage incurred including any additional expenses (such as storage costs).

VII. Property rights, provision of documents

1. The customer shall inform Würth without delay of any property right claims of third parties pertaining to the products delivered by Würth. Würth may, but is not obliged to, defend these rights at its own cost and for its own benefit.
2. The customer warrants that any accompanying goods, services and documentation provided by the customer are free of third-party rights. The customer shall indemnify Würth against any claims of third parties arising out of the infringement of third-party rights, unless the customer cannot be held responsible for this legal defect.
3. By providing documents to Würth, the customer grants Würth the non-exclusive right to use these documents for the contractually agreed purposes anywhere and for an unlimited period of time. In the event of product inquiries based on documents provided by the customer such as drawings and specifications (parts made to order), Würth may provide these documents to upstream manufacturing companies to complete the inquiry process and perform the contract through sub-suppliers. Should the customer demand changes to the specifications or additional specifications when inquiring about parts made to order without making these changed or additional specifications or drawings available to Würth, Würth may change or amend the existing drawings or specifications accordingly.

VIII. Claims for defects of the customer

1. Unless otherwise provided below, the rights of the customer in the event of material and/or legal defects are subject to statutory requirements.
2. The legal basis for any liability for defects on the part of Würth shall be the agreement made concerning the quality of the goods. Agreements on the quality of the goods include all product descriptions and specifications which are either contained in Würth's catalogs on the basis of the corresponding standards (e.g. DIN, ISO) or provided to Würth by the customer and expressly approved by Würth.
3. Any claim made by the customer based on any defect in the quality or condition of the goods is subject to the customer having fulfilled its legal obligations to examine the goods upon delivery and notify Würth of any defects (sections 377, 381 HGB). Any defect discovered during examination or later shall be notified to Würth in writing without delay. Such notice shall be deemed given without delay if delivered or mailed within two weeks. Without prejudice to the above examination and notification obligations, the customer shall inform Würth in writing of any obvious defects (including wrong and short shipments) by mailing a corresponding notice within two weeks after delivery. In the event the customer fails to duly observe its examination and/or notification obligations, Würth will not accept liability for any defects not notified to it.
4. Should the goods delivered be defective, Würth reserves the right to choose an appropriate remedy either by repairing the defect (rectification) or providing goods free of defects (replacement). However, nothing in this agreement shall exclude or in any way limit Würth's right to refuse the provision of a remedy in accordance with applicable laws.
5. Würth may make the provision of the remedy owed to the customer dependent on whether the customer pays the payable purchase price. The customer may, however, withhold a reasonable proportion of the purchase price.
6. The customer shall give Würth a reasonable period of time and the opportunity to provide the required remedy including, without limitation, returning the defective goods to Würth for examination purposes. In the event of replacement, the customer shall return the defective goods to Würth in accordance with statutory requirements. Any remedy provided by Würth does not include the removal nor the reinstallation of the defective goods unless the installation was originally carried out by Würth.
7. In the event the goods are defective, all costs incurred during the examination of the goods and the provision of a remedy including, without limitation, transport, travel, work and material costs (not removal or installation costs) shall be borne by Würth. Should the claim of the customer turn out to be unjustified, Würth may demand reimbursement of all costs incurred in connection with the customer's claim.

8. In the event Würth fails to remedy a defect or a reasonable grace period set by the customer expires without any results or can be dispensed with in accordance with statutory provisions, the customer may revoke the contract or reduce the purchase price. The customer has no right to revoke the contract if the defect is immaterial.

9. Except as expressly provided in Section IX, any claims of the customer for damages and/or for reimbursement of futile expenses are hereby excluded.

IX. Other liability

1. Unless otherwise specified in these terms and conditions including the following provisions, Würth shall be liable for any breach of contractual or non-contractual obligations in accordance with statutory requirements.
2. Nothing in these terms shall exclude or limit Würth's liability for claims based on willfulness or gross negligence howsoever arising. In the event of ordinary negligence, Würth shall only be liable for
 - (a) death or personal injury;
 - (b) material breaches of contractual obligations (obligations essential for the proper performance of the contract the compliance with which the contracting partner may generally trust in). In such a case Würth's liability shall, however, be limited to the foreseeable damage normally covered by a contract.
3. Notwithstanding the provisions in paragraph 2, Würth does not exclude or limit liability for fraudulent concealment of defects or for any warranties or representations made by Würth as to the nature or quality of the goods. The same applies to claims of the customer made on the basis of the German Product Liability Act (ProdHaftG).
4. In the event of a breach of contractual obligations not caused by a defect, the customer may only revoke or terminate the contract if Würth is responsible for this breach. The right of the customer to terminate the contract at any time (including but not limited to the rights granted in sections 651 and 649 BGB) is hereby excluded. In all other respects, the statutory provisions apply.

X. Limitation of actions

1. Notwithstanding the provisions in Section 438, paragraph 1, number 3, BGB, the standard limitation period for claims based on material or legal defects shall be one year from the delivery date.
2. Any claims related to a building or a product specifically designed for use in construction, which was used in and caused a defect in a building (construction material), are subject to an extended limitation period of five years from the delivery date in accordance with statutory requirements (Section 438, paragraph 1, number 2, BGB). The special statutory requirements governing third parties' proprietary claims for the return of property (Section 438, paragraph 1, number 1, BGB), fraudulent concealment by the seller (Section 438, paragraph 3, BGB) and recourse claims in case of deliveries to consumers (Section 479 BGB) remain unaffected.
3. The above limitation periods specified in the German sale of goods laws shall also apply to all contractual and non-contractual claims for damages made by the customer based on defective goods, unless applicable legal provisions require shorter limitation periods in individual cases (sections 195, 199 BGB). Irrespective of the above provisions, nothing in this agreement shall preclude or in any way limit the limitation periods for claims under the German Product Liability Act. In all other respects, claims made by the customer for damages under Section IX are subject to the applicable statutory limitation periods.

XI. Hydrogen embrittlement

1. Würth and the customer are aware of the numerous possible causes and problems of hydrogen-induced cracking, particularly in galvanized, high-strength and/or case-hardened items with an ultimate tensile strength of 1000 N/mm² or more and core or surface hardness of 320 HV or more, as specified in DIN EN ISO 4042. Würth cannot guarantee the complete elimination of hydrogen embrittlement risks.
2. In the event the risk of hydrogen embrittlement in the goods delivered by Würth needs to be reduced even further in special individual applications due to construction requirements or for safety reasons, the customer and Würth shall conclude a separate agreement on the process structure and material procurement to limit the above-mentioned risks.
3. The DIN EN ISO 4042 standard is an integral part of all agreements concluded between Würth and the customer.

XII. Applicable law and place of jurisdiction

1. These business transactions and all legal relationships between Würth and the customer are subject to the laws of the Federal Republic of Germany under exclusion of all international and supranational (contractual) legal systems including, without limitation, the UN Convention on Contracts for the International Sale of Goods. The legal requirements and effects of the retention of title clause under Section IV are subject to the laws applicable at the location of the goods to the extent the laws of the Federal Republic of Germany are invalid or ineffective.
2. In the event the customer is a businessperson within the meaning of the German Commercial Code, a public law entity or a special fund under public law, the exclusive and international place of jurisdiction for all disputes arising out of or in connection with the contract shall be the court of competent jurisdiction at Würth's head office in Bad Mergentheim. Würth does, however, reserve the right to bring its claims against the customer at the general place of jurisdiction of the customer.