

# General terms and conditions of delivery of the Welte group of companies Version: November 2014

Valid for

Welte-Wenu GmbH  
Welte Cardan-Service GmbH  
Welte-Rohrbiegetechnik GmbH

## Art. 1 Validity

1. The following terms and conditions shall apply exclusively to any offers submitted by us and to any agreements on the delivery of goods and work performed concluded with us.
2. Terms and conditions of purchase or any terms and conditions of the purchaser to the contrary shall only apply if we confirm them in writing.

## Art. 2 Conclusion of the agreement

1. The purchaser shall accept full responsibility for the documentation and technical specifications made available or to be supplied by it being accurate and complete. Should no special requirements or terms and conditions of use be specified by the purchaser, Welte may assume the requirements and terms and conditions of use that are known to it or usual.
2. All our offers, in particular any in catalogues or sales documentation or on the Internet, are non-binding. They are to be considered, legally, as a request to submit offers.
3. Orders shall be deemed accepted if they have either been confirmed by us in writing or executed without delay following receipt of the order.
4. The contractual content shall, in case of doubt, be in line with our order confirmation, or - should the latter not be issued - our delivery note.
5. Details regarding weights and measurements, as well as performance specifications, illustrations and drawings, shall be approximate figures unless they have been designated binding by us.
6. We reserve the rights of ownership and rights of exploitation under copyright law in cost estimates, construction drawings and other documentation to an unlimited extent. They may only be made accessible to third parties with our consent, and, should an agreement not materialise, are to be returned without delay.
7. The right to make any changes in construction or shape during the delivery period is reserved, as long as only insignificant changes in the service are concerned and the latter are reasonable for the purchaser.
8. Any additional agreements - also with our representatives, field workers or other agents - shall explicitly require to be confirmed by us in writing in order to be legally valid.
9. Order confirmations shall, however, be valid, subject to approval by the commercial credit insurer. Should the commercial credit insurer decline to insure the purchaser, we shall be entitled to withdraw from the contract. Such withdrawal is to be declared within two weeks of receipt of the notification by the commercial credit insurer that the purchaser cannot be insured. Regarding the timeliness of the declaration, the date on which the notification was sent shall be pertinent. Receipt of such notification is to be evidenced to the purchaser in a suitable manner upon request.
10. Should further insurance for the purchaser be declined within the scope of ongoing contractual relations with the commercial credit insurer, or should the sum insured be reduced, we shall be entitled to refuse to accept the benefits remaining for us from contracts already concluded, until the consideration is effected. The right to refuse to provide service shall lapse if the purchaser provides collateral security.

## Art. 3 Cost estimates and terms of repair

1. The services provided until such time as a cost estimate is submitted, as well as any further expenditure incurred and to be proven (troubleshooting time = working hours), shall be invoiced to the purchaser if a repair order is not issued by us for reasons that are not our fault or the repair order issued is cancelled by the purchaser without any grounds for termination that are our fault existing.
2. Should no repair order be placed, or should it not be possible to carry out the repair, the item to be repaired only needs to be restored to its original condition if the purchaser explicitly so wishes, and only in return for reimbursement of the costs, unless the steps carried out by us were not necessary in order to find the fault.
3. The expected repair price specified in the cost estimate shall be non-binding, unless it has explicitly been agreed in writing. Should it not be possible to carry out the repair at the price specified in the cost estimate, or should we deem it necessary to carry out additional work while we are repairing the item, the consent of the customer is to be obtained if the repair price given in the cost estimate is exceeded by over 15%.
4. Should the repair be carried out outside our workshop, the customer shall, if required, assist our repair staff in carrying out the repair, at its own expense. The customer shall be obliged to provide technical assistance at his own expense, in particular to:
  - a. provision of the necessary suitable assistant staff in the number required for the repair and for the required period of time. The assistant staff are required to follow the instructions of the site supervisor. We shall accept no liability for the assistant staff. Should any defect of damage occur through the assistant staff due to instructions of the site supervisor being followed, the regulations in Art. 8 shall apply.
  - b. provision of the necessary equipment and heavy tools, as well as the necessary articles and materials of daily use.
  - c. provision of heating, lighting, operating power, water, including the necessary connections.
  - d. provision of necessary dry and lockable rooms for the storage of the tools of the repair personnel.
  - e. protection of the repair site and materials from damaging influences of all kinds, cleaning of the repair site.
  - f. provision of suitable thief-proof common rooms and workplaces (with heating, lighting, washing facilities, sanitary equipment) and First Aid for the repair personnel
  - g. provision of materials and undertaking of all other actions which are necessary for adjusting the repair item and carrying out a contractually arranged test.

The technical assistance of the customer must guarantee that the repair is begun without delay following the arrival of the repair personnel and is carried out up to the point of acceptance by the customer without delay. To the extent that particular plans or instructions of the installation company needed from us, we shall make these available to the customer in good time.

5. Should the customer not fulfil his obligations, we are entitled but not obliged, after setting a deadline, to undertake the actions which the customer was obliged to carry out himself, and at the customer's expense. Furthermore, our statutory rights shall remain unaffected.
6. In the event of a repair order being placed, we shall be entitled to require a reasonable advance payment.

7. In regard to the accessories and spare parts, as well as replacement units, used by us during repair, the reservation of ownership outlined in Art. 9 shall apply.
8. The lien under Sec. 647 German Civil Code (BGB) can also be asserted due to claims arising from work carried out at an earlier date, deliveries of replacement parts and other services, if they relate to the item to be repaired.

## Art. 4 Delivery

1. Delivery deadlines shall only begin to run after entirely clarifying all details in regard to the execution. Adherence to delivery deadlines shall assume that the customer fulfils its contractual obligations, in particular the payment of an agreed deposit and making any necessary documentation available in good time.
2. In the case of delays in delivery due to Acts of God or due to events that are not in any way our fault and which severely impede our ability to deliver, or make it temporarily impossible - including in particular strikes, lock-outs, official decrees, transport hitches, etc. - also if they occur with our suppliers or sub-contractors, the agreed deadline shall be extended by a reasonable extent. Should the obstacle to performance persist for over three months, both contracting parties shall be entitled to withdraw from the contract, in whole or in part. Any claims for compensation for damage shall be excluded. The same shall apply if we are not supplied by our own supplier, or not supplied in good time, without our being at fault in any way.
3. Partial deliveries shall be permissible within a reasonable scope.
4. Should specially-designed goods be ordered, we reserve the right to deliver a greater or lesser quantity.
5. Details of delivery or production dates (delivery times) shall only be deemed approximate unless we have explicitly designated them binding in writing. We shall endeavour to adhere to any delivery deadlines agreed. Should we culpably exceed delivery deadlines, the customer shall be obliged to set us a reasonable grace period. Following expiry of such a grace period, the customer may withdraw from the contract. In regard to the assertion of damage for delay and damage due to non-performance, Art. 8 shall apply accordingly.
6. Should shipping be delayed for reasons that are the customer's fault, a storage fee of 0.5% of the amount invoiced for each month commenced, however no more than 5% of the amount invoiced, can be requested. Asserting greater damage is not thereby excluded. It shall be up to the customer to prove that no damage, or considerably less damage, has been incurred.
7. Should the customer culpably refuse to fulfil the contract, we shall be entitled to require compensation for damage in the amount of 20% of the order value, exclusive of VAT. Asserting greater damage is not thereby excluded. It shall be up to the customer to prove that no damage, or considerably less damage, has been incurred.

## Art. 5 Prices, terms of payment

1. Prices shall be deemed strictly net ex works, inclusive of shipping, exclusive of the statutorily applicable VAT. Any ancillary expenses, such as packaging, freight, postage, insurance and delivery charges, as well as unloading, shall be charged separately.
2. Any customs duties, taxes or similar duties incurred in the customer's country as a result of our deliveries and services are to be borne by the customer.
3. Should there be over four months between concluding the agreement and beginning to execute the agreement, we reserve the right to increase our prices appropriately if cost increases, in particular increases in the prices of materials and raw materials, staff, production costs and the costs of transport, occur after the agreement has been concluded. We shall provide the customer with evidence of the latter upon request.
4. The customer may only offset our claims against counterclaims which are undisputed or have been established with legal finality.
5. The assertion of a right of retention due to disputed counterclaims or ones that have not been established with legal finality is excluded unless such claims are based on the same contractual relationship.
6. Payments may only be made to us. No claims against us may be assigned.
7. Should the customer be in arrears with any payments owed to us, all claims existing against such customer shall immediately be due for payment. The same shall apply if we become aware of any circumstances which cause us to doubt the customer's creditworthiness (for example, if the latter in particular does not redeem cheques or bills of exchange, or ceases to make payments or if its liabilities significantly exceed its assets, as well as in the case of a petition for the institution of insolvency proceedings being filed).

## Art. 6 Transport, passing of risk, acceptance

1. Upon goods being delivered, the risk shall pass to the customer, even if delivery "carriage paid" has been agreed, once the goods leave our factory or the customer is in default with accepting goods. This shall also apply to partial deliveries. Should the shipping be delayed for reasons that are the customer's fault, the risk shall pass to the customer upon readiness for despatch being notified. The same shall apply accordingly if the goods are delivered ex works of a third party commissioned by us. In the case of the customer being in default with acceptance, we shall, moreover, be entitled to charge an appropriate warehouse fee.
2. Any transport damage is to be notified by the recipient to the carrier prior to paying for the freight and prior to accepting the goods. The recipient shall be required to notify the forwarding agent of any damage or shortfalls in the quantities of goods that are not outwardly recognisable upon acceptance within one week of delivery.
3. Should the acceptance be delayed in the case of work performed, for reasons which are not the customer's fault, the work shall be deemed to have been accepted if a reasonable grace period set by us for the customer to carry out the acceptance has expired fruitlessly and we have simultaneously pointed out to the customer the significance of the grace period expiring, however at the latest three months after delivery.

## Art. 7 Notice of defects, liability for defects

1. Details regarding properties, e.g. concerning dimensions, weight and other technical details, shall only be understood to be descriptions of properties, and shall not mean that we provide a warranty in regard to them. It is up to the customer to check whether the goods are suitable for their purpose.
2. The goods supplied by us are to be examined carefully in regard to the quantity, any defects and properties without delay following receipt by the customer. They shall be deemed to have been approved if no recognisable objections have been put forward to us in writing immediately, at the latest within one week of receipt of the goods, or following discovery of such a defect if it becomes only apparent at a later date. The latter shall not apply if acceptance has explicitly been agreed to be required. Should the customer establish a defect in the goods, the customer may not dispose over such goods, i.e. the goods may not be divided up, sold on or processed further.

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3. Should any defects be established in the goods supplied or work performed, we may, at our option, provide subsequent fulfilment either by remedying the defect or by supplying an item free of defects. In this respect, we may, at our option, require the defective goods to be sent to us for reworking or exchange (to be subsequently sent back) - at our expense - or otherwise require the customer to keep the defective goods at hand, and the reworking or exchange will then be carried out there, by us or a worker commissioned by us. The customer shall have a claim to the latter if it cannot be expected to send us the goods. The expenses necessary for the purpose of subsequent fulfilment (in particular the costs of transport, toll fees, labour and materials) shall be our responsibility. This shall not apply to increased expenditure resulting from the goods having been brought to a location other than the customer's residence or commercial permanent establishment after delivery, unless such relocation was in line with the intended use of the goods.
4. In the event of failure, i.e. of it being impossible to remedy the defect, serious and final refusal, unreasonable delay or attempting subsequent fulfilment in vain, the customer shall be entitled to reduce the purchase price or, at its option, withdraw from the contract. Withdrawal is excluded if the subject of the liability for defects concerns construction work.
5. Should a defect be due to our fault or fault attributable to us, the customer may, on the prerequisites established in Art. 8, require compensation for damage or reimbursement of expenses.
6. The period of limitation for claims concerning defects shall amount to 12 months. In the event of a defect in the cases covered by Sec. 438(1)(2) German Civil Code (BGB) (Buildings and components used for buildings) or Sec. 634a(1)(2) German Civil Code (BGB) (Buildings and planning and supervisory services in regard to buildings), the period of limitation shall be five years. Should the claim for defects be dependent upon fault, the period of limitation in accordance with Art. 8 clause 4 shall apply. Any delivery of used goods agreed with the customer in the individual case shall be made subject to exclusion of any claims for defects.

**Art. 8 General liability**

1. In the event of a breach of duty, we shall only be liable for compensation for damage or reimbursement of expenses (subject to the further contractual and statutory prerequisites for liability) in the event of intent or gross negligence. The latter shall not apply if the breach of duty concerns a cardinal obligation (contractual obligation, the infringement of which jeopardises achieving the contractual purpose and adherence to which the contracting parties may usually trust) or a warranty, or if it leads to liability for losses arising from injury to life, the body or the health or if we are liable under the Product Liability Act.
2. In the event of liability due to negligent infringement of a cardinal obligation, the liability shall be limited to such damage as was contractually typically foreseeable upon concluding the agreement.
3. The above exclusions and limitations of liability shall equally apply in favour of our governing bodies, legal representatives, employees, vicarious agents and any other agents.
4. The period of limitation for any claims for compensation for damage or reimbursement of expenses made against us, on whatever legal grounds, shall be 12 months, unless we are liable based on intent or gross negligence or for losses arising from injury to life, the body or the health or under the Product Liability Act.

**Art. 9 Reservation of ownership**

1. The reservation of ownership agreed below shall serve to secure all our respective existing, current and future claims against the customer arising from the business relationship existing with the customer (including any account balances based on an agreed open account relationship).
2. The goods supplied shall remain our property as goods subject to retention of title until full payment of all collateralised claims arising against the purchaser has been made.
3. Should the customer fall into arrears with payment, we shall be entitled to require the retained goods to be handed over to us, without first withdrawing from the contract.
4. The customer shall keep the goods subject to retention of title safe for us, free of charge.
5. The customer shall be entitled to sell on or process the retained goods in the orderly course of business. It shall, however, already at this point assign to us all claims in the amount of the value of the goods subject to retention of title, along with any ancillary rights, and authorises us to collect such claims. We hereby accept the assignment.
6. The processing or alteration of the goods subject to retention of title shall always be deemed to have been undertaken by the customer on our behalf. To that extent, we shall be deemed the manufacturer within the meaning of Sec. 950 German Civil Code (BGB).
7. The value of the goods subject to retention of title shall be the amount of our invoice. Should the goods subject to retention of title sold on be co-owned by the customer, the assignment of the claim shall extend to the amount corresponding pro rata to the share of the customer in the co-owned property.
8. Should the goods subject to retention of title be processed along with other items, not belonging to us, we shall acquire co-ownership of the new item in the proportion of the value of the goods subject to retention of title in relation to the value of the other items at the time of processing. Should the goods subject to retention of title be joined or blended with goods not belonging to us under Secs. 947 and 948 German Civil Code (BGB), we shall become co-owners in accordance with the statutory provisions. Should the customer acquire sole ownership through joining or blending the goods subject to retention of title with other items, already at this point it assigns to us co-ownership in the proportion of the value of the goods subject to retention of title pro rata to the value of the other goods at the time of their being joined or blended.
9. Should the goods subject to retention of title be installed into a property, ship under construction or aircraft of the customer as an integral component, the customer already at this point assigns to us the claim in the amount of the value of the goods subject to retention of title arising from the sale of the property, property rights, the ship, the ship under construction or the aircraft.
10. The customer shall not be entitled to pledge the retained goods or assign them by way of security.
11. The customer shall be entitled to collect the assigned claims, until such time as we revoke such permission. As long as the customer complies with its payment obligations towards us, we shall not make use of our authority to collect. The customer shall be obliged, upon request, to name to us the debtor of the assigned claim and notify the latter of the assignment, notwithstanding our right to notify the debtor of the assignment ourselves.

12. In the event of arrears of payment, cessation of payment, if insolvency proceedings are instituted over the customer's assets, or if a petition for the institution of insolvency proceedings is dismissed due to lack of insolvency assets, the right to sell, process, blend or utilise in any other way the items delivered subject to reservation of ownership shall lapse.
13. In the event of distraint or any other intervention by third parties, the customer is required to inform us in writing without delay, so that we can file an action pursuant to Sec. 771 German Code on Civil Procedure. To the extent that the third party is not in a position to reimburse us the judicial and extra-judicial expenses of an action pursuant to Sec. 771 German Code on Civil Procedure, the customer shall be held liable for the losses incurred by us.
14. We undertake to release the collateral to which we are entitled at the customer's request, as long as their estimated value exceeds the amount of the claims secured by over 50%.
15. In so far as the legal system of a country to which the goods are supposed to be delivered, as a prerequisite for the validity of the reservation of ownership, in particular also vis-à-vis the customer's creditors, provides for special requirements, it shall be the customer's responsibility to do everything in its power, without delay, to assure that the reservation of ownership materialises and is retained until such time as the purchase price is paid in full. The customer shall bear any costs associated with the latter.
16. Should the legal system of a country to which the goods are delivered, not allow for reservation of ownership, but nonetheless permit us to retain other rights in the items delivered, we may exercise any rights of this nature. The customer shall be obliged to co-operate in any measures that we wish to take to protect our right of ownership or preserve any other rights in the goods delivered.

**Art. 10 Final provisions**

1. The exclusive place of jurisdiction for any disputes with merchants, legal persons and special funds governed by public law shall be the court in whose jurisdiction we have our registered office. We shall, however, also be entitled to prosecute the customer at the location of the customer's registered office, or before any other courts having jurisdiction based on either domestic or foreign law. Mandatory statutory provisions on exclusive jurisdictions shall not be affected by the foregoing provision.
2. German law shall apply to the legal relationship with the customer, however, subject to exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).
3. Should one or more of these provisions be invalid, in whole or in part, the validity of the remaining provisions shall not be affected thereby. Should a valid, appropriate part be included in the invalid provisions, such part shall be upheld.