

Terms of Sale and Manufacturing

for **wek-tec e. K.** and **wek-tec International UG** (haftungsbeschränkt), 6 pages.

1: Introduction and Definitions:

1.1. Both companies are registered at the same address as proprietorships by Dr. Alexander Wekhof for manufacturing and sales of standard and customized sterilization R&D and Pilot equipment using Intense Pulsed UV light (also known as PL) or Pulsed Electrical Fields (known as PEF). Both companies have the same website: www.wek-tec.de. The difference between both only in geographical areas of operations: wek-tec e. K. works domestically and wek-tec International UG is for out-of-state operations plus for holding company patents and trade secrets: <http://www.wek-tec.de/wt-info/wek-tec%20Registrations%20and%20VAT.pdf> .

1.2. Both companies further are referred as "**Seller**", while its equipment and services for sale are further referred as "**Products**", presented at www.wek-tec.de

1.3. A purchaser of Products is referred as "**Buyer**" who during his first inquiry has to present full contact data with his affiliation and position plus the link to the website of his organization. Buyer is to fully comply with these **Terms of Sales and Manufacturing** (further "**Terms**") at his uppermost responsibility.

1.4: Purchasing and usage of our Products requires understanding its purposes and basic operation principles described in its brochures on our website and in operational manuals, where basics are here: <http://www.wek-tec.de/wt-technologies.htm> . Seller is to answer Buyer`s related questions to make sure Buyer understands what he is buying and consequences of an improper usage of to be purchased equipment. After discussions and negotiations regarding a potential purchase, Seller is to present his formal **Offer** to Buyer. If it is accepted by Seller, Buyer is to issue his Purchase Order - further "**Order**".

1.5. If the Bayer is a sales agent for the actual user of the Product (further: **End-User**), then the Bayer has to provide the Seller with the contact to the End-User to discuss technical issues and /or to train the End-User. The Bayer`s failure to comply with the above can be the ground for terminating the contract by the Seller (see further details in the Par.11) since these **Terms** are not transferrable to the third parties unless such a transfer is contractually agreed by all three parties – Buyer, Seller and an End-User.

2. General Conditions:

2.1. Bayer`s order for Products or services from Seller is the subject to these Terms.

2.2. Seller can change or clarify parts of Terms without an advanced notice, yet not for an already made purchase. It is the Buyer responsibility to download these Terms together with the offer from Seller and to save both with warranties, CE letter and other related to the order documentation. Seller is not obligated to keep outdated Terms on its website or in its database. A Buyer who lost his then valid version of Terms has later to refer and to use our currently displayed Terms.

2.3. Any future specific changes within Terms do not affect the validity for the rest of Terms, yet Seller does not have to highlight these changes in future editions of Terms.

2.4. Any objections by Buyer to Terms as a condition of his purchase have to be submitted in writing for a review by Seller. Seller will negotiate these new conditions either accepting or rejecting those only for this specific sale. Then changes if any are to be included in a respective Sales Contract (or in a Purchase Order) between Seller and Buyer. Any prior or later e-mail or telephone objections by Buyer to any Terms provisions shall not be construed as a waiver of these specific Terms conditions by Seller after such changes have been agreed and signed.

3. Product Ordering Procedure:

3.1. Buyer is to submit his technical requirements and is to answer in detail questions posted in response by Seller for his Offer to Buyer. Offer will contain the system price, delivery and payment conditions, etc. If an equipment selection depends on results of evaluation tests, Seller is to suggest those, yet its acceptance is not binding for Buyer.

3.2. Seller`s price has to account for the inflation during the time from the Offer and the

planned ordering time by Buyer if this is longer than 6 months. This time depends if it is for an immediate purchase, for a grant application or for the next year plans.

3.3. Seller first submits an informal offer by e-mail, which is the subject for negotiations and further changes. Only Buyer`s formal Order on the Seller`s formal Offer is under these Terms.

3.4. Seller`s formal Offers have an expiration date of usually thirty (30) calendar days from the date issued, unless otherwise noted on his Offer.

3.5. The Offer is the subject to withdrawal by Seller`s written notice within that period unless the Order is already issued. The reason for the Offer withdraws has to be a Force Major as described further below. Then Buyer`s already paid funds are to be returned to Buyer unless already spent for the ordered Product.

3.6. Offer includes suggested prices and delivery date, a summary of technical data on Product, with a links to the Product description and a link to Terms plus payment conditions etc. The latest Offer replaces all previous formal or e-mail quotations. If any later change in such Offer is desired by Buyer, it is to be submitted anew with requested modifications which will be a subject to additional charges by Seller.

3.7. Current and future suggested prices for Products can change in line with business conditions, unless these are already submitted in a current Offer.

4. Buyer`s Purchase Order and the Product Readiness:

4.1. Buyer is required to submit its formal Order on its letterhead with its local reference number and its VAT number, referencing the Seller`s Offer, the description of the item(s) to be purchased, to confirm payment conditions, to list the delivery address and the person to take the delivery and confirmed payment terms. Seller is to confirm this Order with issuing its Invoice.

4.2. The Order should have a description of the Product Acceptance Procedures which in the case of non-standard customized Product, which is to be fully coordinated between Seller and End-User by signing a separate document before issuing the Purchase order. If it is not done, then Buyer and End-User have to accept verification test procedures suggested by Seller.

4.3. The equipment readiness can be proved via Skype demo, or at an independent facility here in Germany or by a representative from the end-user, who also can complete here the training on the Product and sign the Acceptance Form.

5. Terms for already planned and later non-planned extra payments:

5.1. Agreed by both parties Payments are to be transferred by Buyer from bank to bank via wire as suggested in the Offer and submitted in the Seller`s Invoice. No checks, letters of Credits and so on cannot be used as the method of payments.

5.2. Most of out of Buyers fully prepay 100% their Orders. Other possibilities for costs over 30k€ can have 35% down payment, 35% middle payment on the Progress Report and the rest funds on the Readiness Report before shipping. Seller does not engage in getting Payments after the shipping.

5.3. Overdue payments shall be charged interest at the maximum permitted by the German law. If the Seller is required to retain a collection agency or attorney to collect overdue payments, all reasonable collection costs, including attorney`s fees, shall be payable by the Buyer. The Buyer hereby grants to the Seller a security interest in the products for recovery of the purchase price and fees upon the Purchaser's default.

5.4. An ordered project has to be executed by the Seller within budgets provided by the Buyer for each stage. Yet these budgets are the subject to an increase and /or redistribution between stages when an unexpected larger funds are to be proved necessary for completing custom projects, due to "the Force Major" (par.12). In such a case the Seller has to provide the Buyer with documented rationales for additional funds or for a redistribution of prior committed funds in order to complete the Order. This will require negotiations where the Seller cannot be forced by Buyer to resolve raised problems only on his own. If no mutually accepted solution is reached, the Buyer and/ or Seller have the right for the late cancellation of the project on conditions in par. 11.

6. Certifications:

6.1. Under German laws Seller is obligated to provide its own safety certificate known as CE. This is a legal confirmation that the Product is safe to operate in its original enclosure. Seller provides such CE certification for each sold Product after performing Product functionality tests and TESTS on Electro-Magnetic noise - all in-house. E.g. to assure a stable work of outside electronic equipment (IPC, etc) within 1-3 m from the Seller product. Whenever it is possible Seller Products comply with the European "Good Manufacturing Practices" (GMP) and carry liability insurances.

6.2. By issuing the CE certificate on sold Product, Seller takes the responsibility for damages which could result if the unit causes damages at Buyer facilities, providing it was proven without any doubt that the sold equipment was operated strictly in accordance with the Product Manual. Notwithstanding the above, Buyer has to include this newly purchased Product in his liability insurance along with other equipments on Buyers Facility.

7. Local Permits and Taxes:

7.1 Buyer is to upfront inform Seller about any modifications to be made so to comply with Local or State permits, which Seller will incorporate in its Products at Buyer's additional expense.

7.2 Any manufacturer's tax, use tax, sales tax, or tax of any nature whatsoever, which could be later assessed against this Offer /Order, shall be in Offer to be paid by Buyer.

8. Limited Warrantee and Repairs:

8.1. Warranties are granted to the original Buyer from the date of the equipment delivery and are non-transferable to other users unless by a signed Transfer Agreement between Seller, Buyer and another end-user. Seller warrants that the Products manufactured by Seller will be free from defects in material and workmanship under the use strictly with the Product Operational Manual and Training after delivery (can be via Skype), for a period of 3 (three) months for all electronic and High Voltage components and for one (1) year for all mechanical components from the date of shipment, also depending on type of Product and requirements for its service.

8.2. Products purchased by Seller from a third party and incorporated in the Seller's Product carry only their own warranties by the original manufacturer and could expire by the time of the Product delivery to Buyer. In such a case Seller extends warrantees as per 8.1 above.

8.3. After the Seller accepts the claim for repairs at his costs, the Buyer has to ship the unit to Seller at Seller costs. Seller will determine if a malfunction is covered by the warrantee. If not, Seller is to send his offer for to be paid repairs. If a Buyer accepts it, he has to place his Purchase Order for repairs at Buyer cost. If Buyer rejects the offer for paying non-warrantees repairs, he has to compensate Seller's costs for the shipment and already spent time for investigating the cause of the Product not following warrantees. Failure by Buyer to pay these costs can result in holding the Buyer equipment till he pays and if not within 30 days, it can be claimed as not working useless equipment to be retained by Seller for its parts to compensate his evaluation and shipping expenses on this Product.

8.4. Rental repair costs can be charged to a security deposit for rents.

8.5. Customer support if is outlined in the Seller's Offer start from the date of the equipment delivery and expire on the date of service termination, no matter services were used or not by the Buyer.

9. Warrantees and (CE) Exclusions:

9.1. Defects made by an accident by Buyer or his violation of operating instructions.

9.2. Transportation and storage damages: any damages to the shipping box and possibly to the Product are to be reported during the acceptance of the shipping within the same day otherwise shipping warrantees and seller Warrantees became invalid.

9.3. Any intervention by Buyer in to equipment electrical and/or mechanical hardware for any purpose including for unauthorized repairs. Exception is for maintenance and changing lamps described in the Product Operational Manual.

9.4. Usage of a Product outside its purpose / application designated by its brochures and Manuals, not following provided unpacking, storage and installation procedures, skipping offered Training via Skype - each of these points fully cancels all Product warranties.

9.5: Seller does not warrant the exactness and applicability of the results reached with our Products but warrants only its up-front stated technical functions: pulse parameters, process chamber geometries used materials, enclosure types and so on. This is to be confirmed by the Acceptance demo-tests if those are specified in the Offer. Such demo-tests have to be first performed at the Seller before the shipment and to be financed by the Buyer as per respective clauses in the Seller's offer and Buyer's purchase Order.

9.6: If training and acceptance tests as per the Offer / Order have not been performed within two weeks after the Product delivery to the Buyer, the Buyer had to arrange the shifting these tests for max two weeks later. If not, such a Product is deemed to be considered as fully accepted.

10. Shipment and Risks of Loss:

10.1. The Seller's Product is considered as fully sold after it is taken by the shipment service. Transportation to its end destination from customs and passing customs at his land is the Buyer's responsibility, unless it is in EU. The Buyer is solely responsible for payment of customs taxes, import duties and all local taxes.

10.2. For exports Seller is to prepare all documents necessary for shipment. Seller uses and pays DB/Schenker AG for the shipment and its insurance for a loss of the shipment and for damaging the Product through damaging its shipment box.

10.3. Seller is to charge Buyer for shipment upfront unless Buyer offers its shipping agent and takes a full responsibility for shipping (in writing, while placing its order).

10.4 Buyer is to follow Seller's acceptance and un-packaging instructions and shall not sign-off a package damaged by a carrier at the time of delivery - it is Buyer responsibility to hold the shipment carrier for any damages by filing respective damage forms.

Buyer's failure to report package damages annuls all warranties.

10.5. In some special (like Force Major during Covid19, etc.) cases the Seller can use other than already committed shipment services. If this is to happen after the purchase order already was issued by Buyer, then Seller or Buyer are to select another shipping service and its new prices. If expenses for shipping became higher than planned in the Purchase Order than Buyer is to cover the difference.

11. Order Cancellation, Product Returns and Refunds:

11.1. Buyer has the right to cancel his Order for its Buyer's internal reasons after Placing his Order and/or after transferring his payment any time during the Order execution by the Seller. In such a case Seller has the right to retain all the funds already spent on components, overhead etc. from the time of funds transfer to the time of the Order cancellation plus to charge the late cancellation fee of 35% on remaining paid funds. Then whatever left funds are to be returned to Buyer.

11.2. Cancelling the Order because of delays and other failures, caused by outside of the Seller control (e.g., due to vendors or sub-contractors delays or non-performance, due to consequences of Force Major cases, etc.), is not the valid ground for the cancellation. If this is done by the Buyer anyway, the Seller will not to return any funds to Buyer.

11.3. If Buyer is not able to complete the rest of payment (e.g., 50% or more) in time upon the system full completion, the Product becomes the property of Seller.

11.4. The Seller can stop working on a fully new one-of-a kind custom system in the case of finding discrepancies in the Buyer's Purchase Order due to mistakes or inconsistencies on the Buyer side or due to unforeseeable technical findings later. The Buyer has to cooperate with the Seller in solving such issues by advancing to be negotiated funds and time for implementation of to be found solution. Should Buyer retain from helping to solve such an unforeseeable situation with the Project, Seller has the right to withdraw from the project using the above clause 11.1, when the Buyer

terminates the project. Both Bayer and Seller than have to retain from any legal actions against each other.

11.5. Should Seller report to the Bayer his concerns regarding the project execution then the Bayer has to negotiate the solution to the raised problem via Skype calls and e-mails. Should this happen for one-of-a kind new Products, then the negotiated solution has to be written and signed by both parties as the Amendment to the Order. Should the Bayer ignore such a problem and refuse to sign /edit etc the proposed solution by the Seller during one month from its submission by Seller to the Bayer, the Seller can formally in writing withdrew from the project and to proceed as per par. 11.4 above.

11.6. Rental fee and both ways shipping is not refundable if the Buyer cancels the order after rental time has started at the Buyer place or at the Seller place, or the rental work at the Buyer location was not started - the rental time is running from the delivery date.

11.7. IN NO CASE IS MERCHANDISE TO BE RETURNED WITHOUT FIRST OBTAINING THE Seller's WRITTEN PERMISSION AND RETURN INSTRUCTIONS. Product returned by Buyer with no Seller authorization becomes the property of the Seller unless Buyer within two weeks upon such a delivery returns it at his own costs.

12. Force Majeure:

12.1. The Seller shall not be considered in default in performance or for non-performance of its obligations hereunder to the extent that performance is delayed or prevented by causes beyond Seller ability to control the situation or without the fault of the Seller including causes such as acts of Nature, hostilities, Pandemic, strikes, fire, flood, transportation delays or losses, illness of key employees, sudden disruption or substantial increase in the cost of supplies and parts, shortages of labour, fuel, raw material or machinery, delays by suppliers, and well over the average (or run-away) inflation in costs during the product execution, which diminish payments to the Seller for the ordered product. To resolve the negative outcomes of any above could require extra financing from the Buyer as per par. 5.4.

12.2. Some technical failures are to be considered as Force Majeure when Seller has exercised ordinary professional care in the prevention thereof for a customized one-of-a kind new Product yet encountered unforeseeable technical, physical, chemical or biological effects which will diminish the system projected performance. In this case a compromise solution by the Seller has to be accepted by the Buyer.

12.3. To be found inconsistencies in the Bayer´s Order during the project executions, especially for custom projects, are also can be treated as the Force Major and be solved in line of §11.4-§11.5.

13. Proprietary Seller Information (Trade Secrets), Patents:

13.1. Seller is in the business of custom and semi-custom low volume or single Products, sometime delivered on a confidentiality base with a signed non-Disclosure one-sided Agreement (NDA) to protect Buyer Proprietary data where the Seller does not disclose its Proprietary information. Seller has the right to decline signing Mutual Non-Disclosure Agreement (MNDA) since has no means to control the Buyer´s performance during the time of validity of to be signed MNDA.

13.2. Seller can provide only general technical information of his Product without actual schematics, lists of parts and used software. Buyer is prohibited to employ a reverse engineering of Seller Products for its own benefits, or for benefits of third parties, without a signed Agreement with the Seller on transfer respective rights. Buyer is to be liable for all losses resulted from such a violation and for all legal costs as to be determined in the German Court of Law in Konstanz (see par. 16) and/at his local courts.

13.3. Seller assures Buyer that the ordered Products sold do not infringe any valid US, EU etc. patents or copyrights as of the date of Seller Offer. Buyer is to promptly notify Seller of any claim in which such infringement is alleged and will fully cooperate with Seller to make whatever changes to ordered Product so to avoid such an infringement, within technical, financial and time limitations of both Seller and Buyer. Buyer´s failure to send such a notification during the Order execution annuls all his later claims of this nature.

14. Liability and Indemnification:

14.1. The Buyer is to use Products strictly in accordance with its User Operational Manual and request training, if finds it difficult to understand Product Manuals and/or Brochures.

14.2. Buyer is obligated to take over and/or ward off all reclamations, coming to the Buyer from third parties who used Seller´s Products incorporated in product lines of the End User or its sub-systems. By incorporating Seller´s purchased items in his product line, Buyer or End-User assumes a full responsibility for his overall product lines.

14.3. Seller shall not be liable for a loss of prospective profits, incidental costs, or special indirect or consequential damages arising from the use of Seller Products outside of the product Operating manuals.

14.4. Seller is to carry the liability insurance for accidents during a proper use of his Products. Each case has to be evaluated both by Seller, Buyer and its Insurance companies promptly starting within one week from such damage. Buyer and his insurance for his product line or at his R&D Laboratory are to fully cooperate with all reasonable requests with Seller.

16. Applicable Laws:

16.1. Terms are originally written in English for Buyers from all World locations. These Terms is de-factor the binding Agreement between Buyer and Seller and are valid from the date of placing the Buyer`s Order and/or from the date of Buyer`s payment on the Seller Invoice.

16.2. Seller is located and incorporated in the State of Baden-Wurttemberg, The Federal Republic of Germany. As such Seller is obligated to perform under Local German laws valid at the time of the Sale, with no consideration given to conflict of other laws and rules, regardless of the places of execution or performance of any other laws.

16.3. Buyers possible coercing Seller in to signing its own Terms of Sale / Performance established in Lands outside Germany as a condition to get its Order is deemed to be recognized illegal by German Courts. Should Seller agree to sign such foreign Terms anyway, it could result in the Seller closure for "mis-presentation" of his activities.

16.4. Seller and Buyer agree that the proper venue for all actions arising in connection with these Terms shall be in the city of Konstanz, State of Baden-Wurttemberg, Germany and in the German language. The German valid translation of these Terms is to be sent to Buyer on the request of his/her attorney located in Germany along with his legal inquiry to Buyer in the German language. Any other written formal inquiries against Seller by Buyer are deemed to be invalid and disregarded for all legal purposes.

16.5. Any action, regardless of its form, arising from a dispute on any subject concerning these Terms, including on latest deliveries must not be brought up by either party after three (3) months following the last written communication on then brought up dispute.

These Terms have been updated on 12 Oct. 2022 and replace its all-previous versions.

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