

wek-tec Terms and Conditions of Sale, 6 pages:

wek-tec e.K. ("wek-tec eingetragener Kaufmann" - ein Einzelunternehmen, in Engl.: Propriety), Kronenstr. 3, 78244 Gottmadingen, Germany, is herein referred to as the "Seller" and the customer or person or entity purchasing products from wek-tec (further "Products") is referred to "Buyer".

1. TERMS and CONDITIONS OF SALE:

1.1 All orders for products or for services (equipment rents, engineering or R&D projects) shall be the subject to these Terms and Conditions of Sale by wek-tec ("TCS-wt").

1.2 Seller can change or clarify parts of TCS-wt without an advanced notice. These changes will not affect the rest of TCS-wt.

1.3 Any objections by Buyer to TCS-wt have to be submitted in writing for review by Seller. Seller can accept at to be negotiated conditions, or to fully decline it also writing.

1.4 Failure of Seller to object to provisions contained in any order or other communication from a Purchaser shall not be construed as a waiver of these TSC-wt conditions or an acceptance of any such provisions by a Buyer.

2. PRICE NEGOTIATIONS and QUOTATIONS:

2.1 Seller has established advanced intense Pulsed UV and PEF sterilization, plus R&D systems with pulsed high strength magnetic fields. These Products are mostly looked after by industrial R&D or university centres to meet their specific objectives. The Seller often can meet these Buyer's objectives by customization of its Products. Buyer's objectives often vary not only in technical aspects, but also in purchasing time and sources of funding. E.g., if a Buyer relies on an EU grant to purchase a customized product, that deters an actual purchase for about 18 to 24 months... Then Seller's price has to account also for the inflation during this period and for other long terms factors. Or if a Buyer is an R&D centre and its work is sponsored by a commercial entity, then a three party Agreement can be reached so to compensate the Buyer-Sponsor for its R&D expenses in return for an order on industrial product in case of successful R&D results.

2.2 Therefore Buyers have to inform Seller about 3 basics: the R&D goal for a system of his/her interest, about his/her planned purchasing time and to disclose the source of funding. Only then both a Buyer and a Seller negotiate the price.

2.3 Formal written quotations are subject to TCS-wt listed herein. Written quotations automatically expire thirty (30) calendar days from the date issued, unless otherwise noted on the quotation, and are subject to withdrawal by notice within that period. Informal e-mail or oral quotations for budget purposes are also the subject to the TCS-wt, and have to be later replaced with formal quotations, with whatever corrections will deem to be necessary at the time of sending this written quotation.

2.4 Formal Quotations (OFFERS), besides prices, can contain a summary of the technical data on an offered product, terms of payments, or a link to the Product description on the Seller's website or use its Brochure. The formal written quotation replaces all previous quotations. This quotation always has the reference to TCS-wt which a Buyer agreed to fully comply with by ordering as per the Seller's Quotation. If any later changes in such Offer are desired by Buyer, it is to be submitted in writing for issuing a newer formal quotation with requested modifications and with a new price. Current and future Prices are subject to change as per business conditions, unless these are already submitted in a formal offer.

3. Buyer's ORDERS:

Buyer is required to submit its formal on its letterhead, numbered Purchase Order, referencing the Seller's quotation, the description of the item(s) to be purchased, its VAT number, confirm payment conditions, list the shipping address, or specified freight carrier information. Each order is to be confirmed by a Seller.

4. TERMS OF PAYMENTS and EXTRA PAYMENTS:

4.1 Unless otherwise specified by Seller in its Offer, terms are paid thirty (30) days from date of Seller's invoice. If these are payment with progressive payments and a down-payment, Buyer has to follow agreed-upon payments in order to keep the execution of the order. If payments are stopped or not fulfilled as per the Agreement, Seller shall have the right to terminate this Order or to suspend further performance of the Order.

4.1 All Buyer Purchase Orders of custom-made products is to be accompanied by an advance 30 to 50% down-payment or by the full 100% prepayment. Subsequent payments is to be made in accordance with the Seller's formal written quotation. Most of out of State orders have to be fully 100% prepaid in advance by the wire transfer.

4.3 Overdue payments shall be charged interest at lesser of the rate of 18% per annum or the maximum permitted by law. If the Seller is required to retain a collection agency or attorney to collect overdue payments, all reasonable collection costs, including attorneys 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.

4.4 Seller has the right to bill the Buyer for any pro-rated rental time till the Product price is fully recovered.

4.5 Any ordered project has to be financed within the budget accepted by the Buyer. In case of custom project any non-planned yet necessary additional expenses have to be justified and to be proposed reported to the Buyer for additional payments. The situation has to be resolved through negotiations. If not, the seller has the right to deliver the system within the paid funds with its simplest safe solution. Any cancellation at this stage are subject to the late cancellation fee from the sum, obtained through a sale of this system to another customer yet not exceeding 20% of his funds.

5. CERTIFICATIONS:

5.1 Under German laws Seller is obligated to provide its own safety certificate known as CE. This is a legal confirmation that the system is safe to operate in its original enclosure. Seller provides such CE certification, and also makes tests for Electro-Magnetic noise by in-house means - it is to assure a stable work of electronic equipment (like PC, etc) within 1-3 m from the Seller products. Seller Products also comply with the European GMPs ("Good Manufacturing Practices") whenever it is possible.

5.2 By issuing this certificate, Seller takes responsibility for damages which could result if the unit is unsafe to operate and for that carries liability insurance. To support this responsibility for CE financially, Seller carries a standard liability insurance.

6. LOCAL PERMITS and TAXES:

6.1 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.

6.2 Any manufacturer's tax, use tax, sales tax, ad valorem tax, or tax of any nature whatsoever, which may be assessed against this order, shall be added to the price quoted or invoiced and shall be paid by the Buyer.

7. LIMITED WARRANTY and REPAIRS:

7.1 Warranties are granted to the original Buyer and are non-transferable and non-assignable. Seller warrants that the Products manufactured by Seller will be free from defects in material and workmanship under normal use and regular service and maintenance for a period of one (1) year from the date of shipment, dependent upon the model of product, as more specifically set forth in the Instruction or Operating Manual covering the use of such model of Product.

7.2 Products purchased by Seller from a third party and incorporated in the Seller's Product carry only the warranty extended by the original manufacturer. All electronic components and lamps are warranted for 90 days from the day of shipment.

7.3 If within thirty (30) days after Buyer's discovery of any warranty defects within the Warranty Period, Buyer notifies Seller thereof in writing, Seller shall, at its option, repair, correct or replace F.O.B. point of manufacture or refund the purchase price for that portion of the Products found by Seller to be defective; provided, that buyer's exclusive remedy for a breach of this warranty as to converters shall be limited to one time replacement of the converter. Failure by Buyer to give such written notice within the applicable time period shall be deemed an absolute and unconditional waiver of Buyer's claim for such defects.

7.4 Free of charge repairs are to be done only during warranty time (or rentals) after a written request from Buyer describing the problem. This will require the Seller confirmation since parts of the Products carry warranties by suppliers.

7.5 After the Seller accepts the claim for repairs, the Buyer has to ship the unit to Seller at his own costs. Seller will determine if a malfunction is covered by the warranty. 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 and to ship it back at his or at Buyer cost, to be agreed.

7.6 After examining the system the Seller may find that repair costs are higher than projected. In this case the Seller has to get the permission from Buyer for this higher repair costs. If no such permission is granted, the buyer has two choices: to return the unit at his costs and try to repair on his own, using documentation from the Seller, unless this documentation presents "trade Secrets" the Seller. Another choice is that the Seller will repair the system anyway and on the permission of the Buyer to sell this system with about 50% of the sale price to the Buyer, if this business-wise will be feasible. Or this sum can be used as a credit to be agreed upon to sell a newer system to the Buyer by the Seller.

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

7.8 Warranty repairs in some cases can be done with a Buyer local technician, to be trained via Skype with the Seller providing all necessary assistance such as drawings, list of parts, direct guidance via Skype. The technician has to have experiences in repairs of electrical hardware including working with HV till 3000V for PUV systems and till 25,000V for PEF systems. In such a case the seller will cover the direct costs of repairs: hourly rate by a technician, costs of parts to be bought locally or shipped by the Buyer. Exceptional cases are the following: very distant Buyer's locations from the seller (Asia, Australia, NZ, both Americas) and/or interruption of regular delivery service due to whatever force major conditions (epidemic, political or economical crisis, Seller internal problems restricting his regular services, and so on.)

8. WARRANTY (CE) EXCLUSIONS are in force when:

8.1. Defects made by an accident at Buyer or in violation of operating instructions.

8.2. Transportation damages,

8.3. Any intervention by Buyer in to equipment electrical hardware for any purpose including for unauthorized repairs. Exception is for maintenance and changing lamps.

8.4. the use of a Product outside the purpose / application designated by Seller.

8.5: Seller does not warrant the exactness and applicability of the results reached with our Products but warrants only technical functions of the Products.

9. SHIPMENT AND RISK OF LOSS:

9.1. The Seller's products are sold F.O.B. point of shipment. Transportation to the destination is the responsibility of the Buyer, unless it is in EU and is prior arranged to a acceptance between Buyer and Seller. For exports outside EU Seller will prepare all documents necessary for shipment, including International Waybill, Uniform Commercial Invoice, and Shipper's Export Declaration (if needed) in accordance with the German

Agreements with the rest of World Countries. The Buyer is solely responsible for payment of customs taxes and import duties.

9.2 Seller uses the Schenker/DB AG with its shipment insurance coverage including for packaging. Their services are charged upfront to Buyer unless Buyer offers its shipping agent and takes a full responsibility for shipping (in writing, while placing its order). Buyer is to read Seller's acceptance and un-packaging instructions and shall not sign-off a package damaged by a carrier - it is the buyer responsibility to hold the shipment carrier for any damages by filing respective damage forms.

9.3 Claims for all shortages, damage, breakage, or delays must be made to the carrier by the consignee immediately at the delivery (if damages are visible). The Seller, however, will endeavour to assist Buyer in every way to secure a satisfactory adjustment of claims. In cases of concealed damage, it is essential that such damage be reported to the carrier within a period of one week or less.

9.4 Each system is delivered with an acceptance form, which is also send as a part of the offer. This form has to be signed and send within 20 days from the date of delivery. If it is not signed while no complain is send within these 20 days, the delivered system will be considered as fully accepted.

9.5. If a Buyer rents a Product from Seller, the Buyer takes a full financial responsibility for the Product, including for all repairs if it is damaged by a Buyer or if it is loss, etc..

9.6. In some special (like Force Major during Covid19) cases the Seller will have to use other than in his Offer already committed shipment services. If this is to happen after the purchase order already was issued by Buyer, then Seller can select another shipping service on his sole consideration in line of then current situation on the shipment market. In this case the actual shipping price could be either higher or lower, yet it will not affect the already committed shipping. The Seller is entitled to keep the difference in case of a lower shipping price due to much extra work and controls over the shipping during Force Major Situations. Any extra shipping costs due to the carrier changing prices after the order the buyer shall carry the difference on its own.

10. CANCELLATIONS and REFUNDS:

Buyer can cancel orders only upon reasonable advance written notice and upon payment to Seller of Seller's cancellation charges such as:

10.1. Any work that can be completed within thirty (30) days from date of notification to stop work on account of cancellation shall be completed, shipped, and paid for in full.

10.2. For work in process, and any materials and supplies procured or for which definite Commitments have been made by the Seller in connection with the order; the Buyer shall pay the Seller for actual costs in accordance with good accounting practice, +25%.

10.3. The Buyer shall have the right to acquire title to all tangible property, including partially finished components, assemblies, subassemblies, raw material, tooling and fixtures, purchased or manufactured directly under the cancelled contract. The exception from this are parts developed by the Seller as his Trade Secrets or patented or applied for a patent. The Buyer shall bear all costs associated with packaging and removal of this property. The Buyer shall forfeit all title to such property not removed within thirty (30) days after notification of cancellation. Further demands to return it can be only for to be negotiated fee, not exceeding 30% of the costs for these parts.

10.4. Parts of down-payment which have been spent for ordered sub-systems, work and overheads, are not refundable.

10.5 Cancelling the order because of delays and other failures , caused by outside Seller's control (due to vendors or sub-contractors delays or non-performance, force major cases etc),entitles the purchaser to collect only 33% of its deposited funding (in case of the full prepayment, or the full down payment which is below 35%). The rest of funds (if those are already pre-paid) can be returned to the customer only after this ordered system is completed under a purchase of another customer.

10.6. A customer who is not able to compete the rest of payment (e.g. 50% or more) upon the system full completion is not entitled for a return of his down payment.

10.7. Rental fee and both ways shipping are not refundable if the buyer cancels the order after rental time has been started, no matter at the Buyer place or at the Seller place, or the rental work for a Buyer has started or not. That is because each renting, also at the Seller place, requires equipment adjustments for each case, special calculations and materials preparations etc, plus tests scheduling, by that excluding other potential parties for renting during the same time frame.

11. RETURNS:

11.1 IN NO CASE IS MERCHANDISE TO BE RETURNED WITHOUT FIRST OBTAINING THE Seller's WRITTEN PERMISSION AND RETURN INSTRUCTIONS.

11.2 Any merchandise returned and not authorized will remain the property of the sender and the Seller will not be liable for its loss by fire, theft or damage can keep it until a full clarification of the case by the Buyer. The Seller can diagnose the returned products even in this case and to request the charges for this work. If Buyer cannot pay for this works, for repairs and for back-shipment, this product can be sold to another Buyer whereas the original Buyer can be intuited only to max 25% of the sale price to another Buyers.

11.3 Products custom manufactured for Buyer is not returnable or refundable when returned without an authorization (see 11.2 for exclusions). Standard Products, in an unused and undamaged condition, subject to written authorization above, may be returned at Buyer's expense within thirty (30) days to get refund or credit, minus a restocking fee of 25%. All transportation charges shall be borne by the Buyer. Returned merchandise must be securely packed to reach the Seller without damage. Any cost incurred by the Seller to return the product to saleable condition will be deducted from the Buyer's credit.

12. FORCE MAJEURE:

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 the control or without the fault of the Seller including causes such as acts of Nature, hostilities, strikes, fire, flood, transportation delays or losses, illness of key employees, disruption of or substantial increase in the cost of supplies and parts, shortages of labour, fuel, raw material or machinery; or technical failure where Seller has exercised ordinary care in the prevention thereof; or, unforeseen circumstances or any events or causes beyond Seller's reasonable control, also because of acts of the Buyer including delay in performing its obligations, or because or by reason of any law, proclamation, regulation or ordinance of any government or governmental agency, or other events or occurrences beyond the Seller's ability to control or without his fault.

13. EXCUSE OF PERFORMANCE, FORCED CHANGES, LEGAL DOMICILE:

If Seller determines that its ability to meet the spec for the ordered Product, or limited due to causes set forth in the preceding paragraph, Seller may allocate its available supply of the Products or such material (without obligation to acquire other supplies of any Products or material) among its purchasers on such basis as seller determines to be equitable without liability for any failure of performance which may result there from such a replacement, specifically valid for "one-of-a-kind or customized Products". Then the Seller's only obligation is to put "it's best" to build a custom Product as close to the original Spec in the Offer as technically occurred to be feasible. In absence of Buyers objections or its own reasonable solutions to such unforeseen problems, the Seller is to deliver the ordered system as it is deemed by Seller to be possible to build. Buyer has to accept any such unforeseen changes without holding Seller liable for it.

Negative changes in the industrial infrastructure during force major situations justify the Seller for delivery delays, some forced changes in the ordered system and also for a request to finance these changes by the buyer.

14. PROPRIETARY INFORMATION, PATENTS:

The Seller is in the business of custom and semi-custom low volume Products, often delivered on an confidentiality base with a signed Mutual Non-Disclosure Agreement (MNDA) to protect both Buyer and Seller or one-sided Non-Disclosure Agreement (NDA) to protect Buyers confidential Information, whatever is agreed between Buyer and Seller. Therefore Buyer cannot use proprietary designs of Seller for its own benefits, or for benefits of third parties, without a signed Agreement with the Seller on transfer of 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. On another side, Seller assures Buyer that the Products sold, except as are custom-made specifically for Buyer according to Buyer's specifications, do not infringe any valid US or EU patent or copyright as of the date of shipment. Buyer is to promptly notify Seller of any claim in which such infringement is alleged and cooperate fully with Seller to make whatever changes so to avoid such an infringement, within technical, financial and time limitations of both Seller and Buyer.

15. LIABILITY AND INDEMNIFICATION:

15.1 The Buyer is to use Products of Seller strictly in accordance with its User Manual and to request a paid training, if finds difficult to understand it.

15.2 Buyer is obligated to take over and/or ward off all reclamations, coming to the Buyer from third parties who used equipment or processes incorporated in systems build by a user of Buyer's Products, sub-systems, processes or OEM products. By incorporating Buyer's purchased items in his product line, Buyer assumes a full responsibility for his overall product lines.

15.3 The Seller shall not be liable for a loss of prospective profits, incidental costs, or special indirect or consequential damages arising from the use of these products or software originated by third parties.

15.4 The Buyer shall hold the Seller free and harmless from all risk and liability for expense, loss, damage or injury to persons or property of Buyer or others, or death of any person, arising out of use or possession of any product or software sold hereunder.

16. GENERAL PROVISIONS:

16.1 No change, modification, rescission, discharge, abandonment, or waiver of these terms and conditions shall be binding upon the Seller unless made in writing and signed on its behalf by a duly authorized representative of Seller.

16.2 No waiver by either party with respect to any breach or default or of any right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound.

16.3 Seller reserves the right to update any part of these Terms without affecting the validity of unchanged parts, and always posts its latest update on its website with a link on its offer, by those replacing older versions, if those were at the Buyer's disposal from prior offers.

17. APPLICABLE LAW:

17.1 This Agreement is entered into in the State of Baden-Wurttemberg, The Federal Republic of Germany, and shall be interpreted in accordance with the General laws of Germany, with no consideration given to conflict of other laws and rules, regardless of the places of execution or performance.

17.2 Seller and Buyer agree that the proper venue for all actions arising in connection herewith shall be in the city of Singen or Konstanz, State of Baden-Wurttemberg, Germany.

17.3 No action, regardless of form, arising out of transactions relating to this contract, may be brought by either party more than one year after the cause of action has accrued.

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