

General Terms and Conditions for Delivery and Payment (GTC)

- Current as of April 2023 -
WATERBECK GmbH
Termed: WATERBECK

1. Scope

1.1 These General Terms and Conditions for Delivery and Payment (GTC) constitute the basis for all business relationships between WATERBECK and the Purchaser. These GTC apply only where the Purchaser is an entrepreneur (Section 14 of the German Civil Code), a legal person under public law, or a special asset under public law. The GTC are an integral part of all contracts concluded by WATERBECK and the Purchaser for WATERBECK deliveries or services. They also apply to future business relationships, even where they have not been separately agreed de novo.

1.2 The Purchaser's or third-party terms and conditions do not apply, even if WATERBECK does not explicitly object to their application in individual cases. Even if the Customer refers to a document that includes the terms and conditions of business of the Customer or of a third party or makes reference to such, this shall not constitute any agreement to the application of those terms and conditions of business.

1.3 The relations between WATERBECK and the Purchaser are governed exclusively by the laws of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) do not apply.

2. Offer and conclusion of contract

2.1 Unless expressly marked as binding or specifying a set acceptance period, all offers are subject to change and non-binding. After submitting its order, the Purchaser is bound by its order until receipt of the order confirmation from WATERBECK, but for no longer than three weeks.

2.2 Information provided by WATERBECK regarding the delivery or service (e.g. weight, dimensions, utility values, load-bearing capacity, tolerances, technical data), inclusive any representation thereof (e.g. drawings and illustrations), are merely approximate unless usability for the contractually intended purpose requires exact accordance. They are not guaranteed qualities or features, but rather descriptions or identifications of the delivery or service. Production-related deviations of up to 10% in relation to dimensions and quantities are permissible. Customary commercial divergences and divergences that occur due to legal regulations or represent technical improvements as well as the replacement of components by equivalent parts shall be permissible provided they do not impair usability for the intended contractual purpose.

2.3 The legal relationship between WATERBECK and the Purchaser is governed solely by the written Agreement, which includes these General Terms and Conditions for Delivery and Payment. The Agreement concluded between WATERBECK and the Purchaser fully reflects all agreements between the Parties on the subject matter of the contract. Oral promises made by WATERBECK prior to or upon conclusion of this Agreement are not legally binding. Any oral agreements between the contracting Parties must be replaced by a written contract, unless expressly agreed otherwise between the parties in each individual case.

2.4 Additions and amendments to the agreements made, including to these General Terms and Conditions, must be made in writing to be legally valid. This also applies to divergence from the written form requirement itself; express, individually negotiated covenants negotiated between the Parties are not covered by this (double) written form clause. To meet the written form requirement, telecommunications transmission, in particular via telefax or email, will be deemed sufficient provided a copy of the signed declaration is transmitted.

3. Prices and payment

3.1 Prices are net and apply from the delivery factory, excluding freight, packaging, expenses, and transport insurance, and excluding statutory VAT. Surcharges for transport and conveyance abroad (customs duties, etc.) are charged separately at the expense of the Purchaser.

3.2 Repairs are charged according to effort. If a cost estimate is desired before conducting a repair, this must be expressly stated by the Purchaser. The costs for the cost estimate must be paid. WATERBECK decides at its own discretion whether a repair takes place in its own or a third-party workshop. The Purchaser must bear the costs for packaging and shipping. Delivery of repaired devices will only occur in return for immediate payment. Warranty repairs of defects are unaffected by this provision.

3.3 If WATERBECK has assumed setup or assembly and nothing else has been agreed, the Purchaser must bear all ancillary costs required, such as travel costs, cost for transport of the tools and personal luggage and all living allowances.

3.4 Invoice amounts must be paid without any deduction within thirty days unless otherwise stated in the order confirmation or otherwise agreed in writing. The date of payment will be regarded as the date that WATERBECK receives the payment. All payments must be made in German currency to the payment office of WATERBECK. Payment by cheque is not possible unless separately agreed in individual cases. If the Purchaser does not pay on the due date, outstanding amounts will accrue interest from the date due at 5% p.a.; this will have no effect on the assertion of higher interest and additional losses in the event of default.

3.5 Unless otherwise confirmed in the order confirmation or otherwise agreed in writing, prices will be fixed for planned delivery within four months subsequent to the signing of the contract. Otherwise, the list prices valid on the day of delivery will be charged. WATERBECK's prices are based on the current material and personnel costs.

3.6 Offsetting against counterclaims of the Purchaser or the retention of payments due to such claims is only permissible where the counterclaims are undisputed or arise from the same order in which the relevant delivery was made.

3.7 WATERBECK is entitled to execute or render still outstanding deliveries or services only against payment in advance or payment of sureties if WATERBECK becomes aware of circumstances after conclusion of the Agreement that stand to significantly reduce the creditworthiness of the Purchaser and as a result of which payment of the outstanding claims of WATERBECK by the Purchaser from the particular contractual relationship (including from other individual orders to which the same master agreement applies) is endangered.

4. Deliveries and delivery periods

4.1 Deadlines and dates for deliveries indicated by WATERBECK for deliveries and services always only apply merely approximately unless a fixed deadline or fixed date has been expressly pledged or agreed.

4.2 The delivery period will begin after receipt of all documents (plans, film, etc.) required for execution of the order and after agreement of all questions required for conduct of the order and receipt of any agreed down payment. If an agreed delivery date is overshot by more than three weeks, the Purchaser must set a period of grace of two weeks.

4.3. To the extent caused by force majeure or other events not foreseeable at the time of conclusion of the contract and for which the Seller is not responsible, WATERBECK assumes no liability should delivery be impossible or delayed (due, for example, to operational disruptions that are unforeseen and unavoidable for WATERBECK, difficulties in the procurement of materials or energy, transport delays, strikes, lawful lockouts, labour, energy or raw material shortages, difficulties in obtaining any required official permits, pandemics or epidemics, governmental measures, or non-delivery, incorrect delivery or late delivery by suppliers despite a congruent hedging transaction concluded by the Seller). WATERBECK will, for the duration of the events, not be bound to fulfil the contractually agreed delivery obligations. Where such events make it significantly more difficult or impossible for WATERBECK to deliver a service or product and the limitation is of more than a temporary nature, WATERBECK is entitled to withdraw from the Agreement. If the Purchaser cannot be expected to accept the delivery or service due to the delay, it can withdraw from the Agreement vis-a-vis WATERBECK through immediate written declaration.

4.4 Without prejudice to any rights emerging from the Purchaser entering into default, WATERBECK may demand from the Purchaser an extension of delivery and performance periods or a postponement of delivery and performance dates equal to the period of time in which the Purchaser has not fulfilled its contractual obligations towards WATERBECK.

4.5 If a partial delivery would be usable for the Purchaser within the scope of the intended contractual purpose, the delivery of the remaining ordered goods is certain and the Purchaser does not incur any significant additional expenses or costs as a result or WATERBECK agrees to bear such costs, WATERBECK is entitled to make partial deliveries.

4.6 In the case of blanket orders and special productions, in particular according to customer-specific requirements, WATERBECK will insist on overall acceptance of the agreed unit number within the specified acceptance time frame.

5. Place of performance, dispatch, packaging, transfer of risk

5.1 The place of performance for all obligations arising from the contractual relationship is, unless otherwise specified, Hamelin.

5.2 The method of shipment and the packaging are subject to the due discretion of WATERBECK.

5.3 If shipment of the goods has been agreed and WATERBECK has not assumed responsibility for their transport, the risk will pass to the Purchaser no later than upon handover of the delivery item (which will be judged to have been handed over upon commencement of the loading process) to the forwarding agent, carrier, or other third party appointed to carry out the shipment. If the shipment or the handover is delayed due to circumstances caused by the Purchaser, the risk will pass to the Purchaser from the day on which WATERBECK has notified the Purchaser that the delivery item was ready for dispatch.

5.4 Storage costs after transfer of risk are borne by the Purchaser. Where WATERBECK performs storage, the costs thereof will amount to 0.5% of the invoice amount of the delivery items to be stored per month or part thereof, but not more than a total of 5%. WATERBECK reserves the right to claim and prove further or reduced storage costs.

6. Right of return

6.1 As a gesture of goodwill, WATERBECK will, subject to the following conditions, grant the Purchaser a right of return after prior consultation.

6.2 The ordered goods can be returned within 30 days from receipt. If the order has been sent in several partial deliveries, the day on which the Purchaser receives the last partial delivery will apply as the date of receipt. The deadline will be judged met if the goods are dispatched in a timely fashion.

6.3. The goods for exchange must be returned to the following address: WATERBECK GmbH, Hagenohsener Str. 8, 31789 Hamelin. The exchange will be carried out at the expense and risk of the Purchaser.

6.4. The goods can only be returned in complete, unused, and undamaged condition. The right of return does not apply to non-prefabricated goods or goods whose manufacturing of is determined by individual selection or specifications made by the customer.

6.5. Returns are made only against a credit note amounting to the original net purchase price. The purchase price will not be refunded. WATERBECK charges an exchange fee of 30% of the original net purchase price for each item being exchanged.

6.6. There is no right of return per Section 6.1 for custom-made products.

6.7. Statutory warranty rights remain unaffected.

7. Retention of title

7.1 The delivery items (reserved goods) remain the property of WATERBECK until full payment of all claims against the Purchaser to which it is entitled and which are secured under the delivery relationship.

7.1.a The Purchaser must treat reserved goods with care. The Purchaser must insure said goods adequately, at replacement value and at its own expense, against fire, water and theft damage. If maintenance and inspection work is required, the Purchaser must carry out said work at its own expense.

7.2. If the value of all of the security interests to which WATERBECK is entitled the exceeds the amount of all secured claims from the delivery relationship by more than 20%, WATERBECK will release a corresponding portion of the security interests upon application by the Purchaser. The Purchaser will determine the security interests to be accordingly released.

7.3 During the existence of the reservation of title, the Purchaser is prohibited from pledges or transfers by way of security and resale only permitted to retailers in the normal course of business and on the condition that the retailers receive payment from their customers or make the reservation that title only passes to the customers when the latter have met their payment obligations in full.

7.3.a If the Purchaser resells reserved goods, it will immediately assign its future claims to WATERBECK from the resale against its customers – in the case of co-ownership of WATERBECK of the reserved goods pro rata according to the co-ownership share – including any balance claims – as security without this later requiring any special declarations. If the reserved goods are resold together with other items without an individual price being agreed for the reserved goods, the Purchaser will assign to WATERBECK with priority over other claims that portion of the overall price claim corresponding to the price charged by WATERBECK for the reserved goods. The same shall apply to other claims that take the place of the reserved goods or arise otherwise regarding the reserved goods, such as insurance claims or claims from tort in the case of loss or destruction. WATERBECK then accepts the assignment.

7.3.b In the event of authentication of legitimate interest, the Customer must provide WATERBECK with the information required to assert its rights and hand over the documents required.

7.3.c Until revocation, the Purchaser is authorised to call in the assigned claims from the resale. In the event of cause, especially in the event of payment default,

cessation of payments, opening of insolvency proceedings (bankruptcy, settlement, joint enforcement), protest of a bill of exchange or if comparable well-founded indications exist that suggest potential insolvency of the Purchaser, WATERBECK will be entitled to revoke the Purchaser's entitlement to collect.

7.3.d If third parties gain access to the reserved goods, especially through garnishment, the Purchaser will immediately refer to the title of WATERBECK and inform WATERBECK of this, in order to enable it to enforce its ownership rights. If the third party is not in a position to reimburse WATERBECK for the court or out-of-court costs incurred in this connection, the Purchaser will be liable for these vis-a-vis WATERBECK.

7.4 The Purchaser will be permitted to process or transform the reserved goods or combine them with other items. This processing, transforming or combination is carried out for WATERBECK. The Purchaser will preserve the new item for WATERBECK with the due care of a prudent businessperson. The processed, transformed or combined item shall be regarded as reserved goods.

7.4.a In the event of processing, transforming or combining with other items not belonging to WATERBECK, WATERBECK will be entitled to co-ownership of the new item to the amount of the share of the processed, transformed or combined reserved goods to the value of the other processed, goods at the time of the processing, transforming or combination. If the Purchaser acquires sole ownership of the new item, WATERBECK and the Purchaser will agree that the Purchaser grants WATERBECK co-ownership to the new item created by processing, transforming or combination in proportion of the value of the processed, transformed or combined reserved goods to the other processed, transformed or combined goods at the time of processing, transforming or combination. The customer shall hold the sole ownership or co-ownership thus created in safe custody for WATERBECK.

7.4.b In the event of the new item being sold, the Purchaser will assign to WATERBECK its title arising from the resale against the customer with all ancillary rights as security without the need for any other special declarations. WATERBECK then accepts the assignment. However, the assignment will only apply to the amount charged by WATERBECK corresponding to the value of the processed, transformed or combined reserved goods. WATERBECK's share of the assigned claim must be settled with priority. Position 5.3.c will apply accordingly regarding the direct debit authorisation and the conditions of its revocation.

7.4.c If the reserved goods are combined by the Purchaser with parcels of land or movable property, the Purchaser will also assign the claim to which it is entitled as payment for the combination with all ancillary rights as security to the amount of the proportion of the value of the combined reserved goods to the other combined goods at the time of the combination to WATERBECK without the need for other special declarations. WATERBECK then accepts the assignment.

7.5 If WATERBECK rescinds the Agreement in the event of conduct by the Purchaser contrary to the terms of the Agreement – especially payment default (enforcement event) – it is entitled to demand return of the reserved goods. The costs incurred for the return of goods are borne by the Purchaser.

8. Notice of defects/guarantee

8.1 In the event of material defects or defects in title of the delivered goods, WATERBECK is initially obliged and entitled, at its discretion within a reasonable period of time, to rectify the defect or to make a replacement delivery. In the event of failure, i.e. the impossibility, unreasonableness, refusal or inappropriate delay of subsequent improvement or substitute delivery, the Purchaser may rescind the Agreement or appropriately reduce the purchase price. The entitlement to compensation for damages is determined per Section 9.

8.2 Warranty claims become statute-barred one year after delivery or, where inspection and approval of goods is required prior to acceptance, after said inspection and approval. This deadline will not apply to claims to damages by the Purchaser due to fatalities, physical injury or health impairments or from breaches of duty by WATERBECK due to intent or gross negligence by WATERBECK or its agents, which become time-barred according to the respective legal regulations

8.3. The delivered goods must be inspected carefully immediately after delivery either to the Purchaser or to the third party appointed by the Purchaser. Where obvious or other defects are present and said defects would have been clear in the course of an immediate, careful examination, the goods will be deemed to have been approved by the Purchaser if WATERBECK does not receive a written notice of defects within seven working days of the delivery. With regard to other defects, the goods will be deemed to have been approved if the notice of defect is not received by WATERBECK within seven working days of the defect becoming apparent; however, if the defect is already apparent at an earlier time during normal use, said time will be recognised as the start of the notice period.

8.4 WATERBECK must be granted appropriate time and opportunity to eliminate the defect. The Purchaser is liable in advance for shipping costs. In the event of justified notice of defects, WATERBECK will pay the costs of the most economical shipping route; this will not apply if the costs increase because the delivery item is located at another location than the location of the intended use.

8.5 Notwithstanding any further claims on the part WATERBECK, the Purchaser will in the event of an unjustified notice of defect reimburse WATERBECK for the expenses incurred for the inspection and – to the extent requested by the Purchaser – for the removal of the defect.

8.6 The guarantee will not apply to natural wear or damage that arises after the passage of risk due to incorrect or negligent handling, excessive stress, unsuitable operating equipment, improper storage or due to special external influences that were not assumed according to the Agreement and to non-reproducible software errors. The guarantee will lapse if the Purchaser changes the delivery item without the consent of WATERBECK or has it changed by third parties and the defect elimination is thereby impossible or is rendered unreasonably difficult. In any case, the Purchaser must bear the additional costs arising for the defect elimination due to the change.

8.7 Any delivery of used items agreed in individual cases with the Purchaser will occur excluding any guarantee for material defects.

9. Liability

9.1 WATERBECK's liability for damages, irrespective of on what legal grounds, especially from impossibility, default, defective or incorrect delivery, contractual breach, infringement of duties in contractual actions and tort will be restricted in accordance with this Section 9, insofar as it is at fault in each case.

9.2 WATERBECK assumes no liability in the event of ordinary negligence of its executive bodies, legal representatives, employees or other agents unless this involves a breach of essential contractual obligations. Contractually essential are the obligation to punctual delivery and installation of the delivery item, its freedom from legal defects and those material defects that considerably impair its functionality or usability as well as advisory, protection and due care obligations that are intended to facilitate contractual use of the delivery item by the Purchaser or are intended to protect the personnel of the Purchaser against physical injury or death or its protect its property against considerable damage.

9.3 Insofar as WATERBECK is liable for damages pursuant to Section 9.2, this liability will be limited to damage that WATERBECK foresaw when the Agreement was concluded as a possible consequence of a contractual breach or which it should have foreseen subject to application of customary business prudence. Moreover, indirect damage and consequential damage which are consequences of the defects in the delivery item will only be subject to compensation if such damage was to be expected typically given proper use of the delivery item.

9.4 The above exclusions of liability shall apply to the same extent in favour of the executive bodies, legal representatives, employees and other agents of WATERBECK.

9.5 If WATERBECK provides technical information or acts as a consultant and this information or consulting does not form part of its duly agreed contractual services, this will be provided without payment and to the exclusion of all liability.

9.6 The restrictions of this Section 9 do not apply to the liability of WATERBECK for behaviour with intent, guaranteed quality features, fatalities, physical injuries or health impairments or according to the Product Liability Act.

10. Industrial property rights and copyright

10.1 The Purchaser will have the non-exclusive right to use of software provided with the agreed performance features in unchanged form on the agreed devices. The Purchaser may only make backup copies of the software if this is necessary for ensuring future use. Copies that are no longer needed must be deleted or destroyed.

10.2 All technologies, algorithms and procedures included in the product as well as all documents which the Purchaser receives from WATERBECK are business secrets of WATERBECK and may only be made accessible to third parties to the extent this is necessary for the use of the product.

11. Place of jurisdiction, final provisions

11.1 If the Purchaser is an entrepreneur, a legal person under public law, or a special asset under public law or has no general place of jurisdiction in the Federal Republic of Germany, the place of jurisdiction for any disputes arising from the business relationship between WATERBECK and the Purchaser will, at WATERBECK's discretion, be Hamelin or the place of business of the Purchaser. However, in these cases, Hamelin shall be the exclusive place of jurisdiction for suits against WATERBECK. This does not affect mandatory statutory regulations regarding exclusive places of jurisdiction.

11.2 If this Agreement or these General Terms and Conditions for Delivery and Payment contain regulatory gaps, those legally effective regulations shall apply to fill these gaps which the contractual partners would have agreed upon according to the business objectives of the Agreement and the purpose of these General Terms and Conditions for Delivery and Payment if they had been aware of the gaps.