

Purchase conditions

As at November 2006

I. General

1. Werth Messtechnik's purchase conditions, exclusively, apply to the legal relationship with the supplier unless Werth Messtechnik has recognised deviations or the supplier's conditions in writing.
2. They apply even if Werth Messtechnik accepts, without reservation, the supplier's delivery knowing that the latter has different conditions or that its conditions deviate from Werth Messtechnik's purchase conditions.
3. These purchase conditions also apply for all future transactions between Werth Messtechnik and the supplier, without a fresh reference to them being required.

II. Orders, order acceptance, remuneration

1. The supplier's quotations must be submitted in writing and at no charge to Werth Messtechnik. The supplier shall point out to Werth Messtechnik any deviations from the latter's enquiry.
2. Only written orders are legally binding. Agreements reached over the telephone or face-to-face must be confirmed in writing by Werth Messtechnik. The supplier must reconfirm the order to Werth Messtechnik in writing and immediately, but at the latest 10 working days after the date of order.
3. Prices quoted to Werth Messtechnik are taken – unless they are expressly listed as not being so – as being carriage paid and inclusive of packaging, insurance and all duties and taxes. The prices agreed are fixed prices. Unless otherwise agreed payment is made following the agreed delivery date within 14 days with 3% cash discount. Werth Messtechnik is free to choose its method of payment. Invoices must be submitted quoting the order number, article number and entry number.
4. The supplier guarantees that it will observe and properly fulfil all stipulations under customs law. It guarantees, in particular, that all proofs of preference, certificates of origin, and suppliers' statements are properly set out. The supplier indemnifies Werth Messtechnik against any claims for damages that arise on account of disregard of the afore-mentioned duties.
5. The supplier only has the right to assign claims against Werth Messtechnik or to allow them to be collected by third parties if it has in its possession explicit, written consent from Werth Messtechnik to do so. The provision of §354a of the German Commercial Code remains unaffected by this clause.
6. Delay in payment without formal warning is ruled out.

III. Performance, execution, changes

1. Performance content ensues from the individual order concerned. Documents, reports, ideas, drafts, models, samples and all other results arising at the time of producing the performance form part of the order performance. The results of the performance are, if necessary, more closely described by means of tender specifications, specifications of work, time schedules and other appendices. Appendices referred to in the order form component parts of it.
2. The supplier ensures that all the data and circumstances that are important to it for fulfilling its contractual obligations, and the intended use by Messtechnik of its deliveries, are known to it in good time. It takes responsibility for its deliveries encompassing all performances that are necessary for use that is in line with requirements, safe and economic; and that they are suitable for the intended purpose and match up to the latest standards of science and technology. When providing its performance the supplier shall observe all the relevant standards, laws and legal prescriptions, especially the relevant requirements in terms of protecting the environment, controlling dangerous materials and goods, and avoiding accidents; and it shall comply with the generally recognised rules of security and of health and safety at work, and with Werth Messtechnik's factory standards. The supplier must enlighten Werth Messtechnik on the necessary official approvals and duties to report involved in the import and operating of the goods concerned.
3. Werth Messtechnik may – to a reasonable extent – demand of the supplier changes in the construction and finish of the goods being supplied. The supplier must implement the changes within an appropriate period of time. Consensual and appropriate rulings must be reached on the effects, especially those relating to additional and lower costs. If no agreement is reached within an appropriate period of time then Werth Messtechnik decides at its reasonable discretion.
4. The supplier gives an assurance that it is able to supply Werth Messtechnik on appropriate conditions with the goods concerned or parts of them as spare parts for a period of 10 years after the end of the delivery relationship.
5. Unless expressly agreed otherwise partial performances are not permitted. In this respect Werth Messtechnik has the right to cancel the residual quantity.
6. If, after expiry of the period of time specified in clause 4 above, the supplier discontinues the delivery of spare parts or discontinues delivery of the goods during this period of time, then Werth Messtechnik must be given an opportunity to place one last order.

IV. Performance periods

1. The delivery dates and periods of time detailed in the order are legally binding. The delivery period begins with the order date. Advance deliveries are only permissible with Werth Messtechnik's written consent. The arrival of the goods at Werth Messtechnik and/or the punctuality of successful acceptance are definitive for compliance with the delivery deadline or with delivery periods of time. If neither "carriage paid" nor "delivered free to point of use" was agreed, then the supplier must make the supplies available taking the normal time for transport or shipping into consideration.
2. If the supplier discovers that the agreed deadline cannot be complied with then it must inform Werth Messtechnik of this immediately and in writing, giving details of the reasons and duration of the delay. That does not affect Werth Messtechnik's statutory rights.
3. Act of God circumstances only release the supplier if it informs Werth Messtechnik of them immediately and in writing, giving details of the exact circumstances and probable duration of the failure to meet the deadline and if there is no appropriate opportunity for the supplier to procure replacement materials.
4. If the supplier does not meet the delivery deadline then Werth Messtechnik has the right - without setting a period of grace and at its option - to demand rectification or compensation in damages in lieu on account of performance not delivered or not delivered as owed, or to withdraw from the contract. In the event of delay in delivery a contract penalty of 0.5 % of the order value per week of delay that has begun is agreed. Contract penalty is restricted to a maximum 5% of the order value. The assertion of further claims remains unaffected by that. The contract penalty must, in this case, be set off against any damage caused by delay that has actually occurred or been asserted. The right to demand payment of the agreed contract penalty is not forfeited if the contract penalty was not explicitly reserved at the time of accepting the delayed delivery.

V. Materials provided

1. Materials provided remain Werth Messtechnik's property and the supplier must store, label and administer them separately, without charge. Their use is permitted only for the individual order concerned. In the event of reduction in value or loss the supplier must reinstate them and, to this end, must take out insurance policies at its cost to cover them. The same applies for the calculated handing over of material that is linked to the order. On request by Werth Messtechnik the supplier shall hand over all confidential documents and items to it. Rights of retention are ruled out.
2. In cases of the material being processed, mixed or re-fashioned Werth Messtechnik becomes the owner of the new, mixed or refashioned goods as soon as they materialise. The supplier shall keep the new, mixed or refashioned item(s) for Werth Messtechnik with all the due care of a prudent businessperson.
3. The ownership of models, tools, moulds etc. (referred to after this as the tools) that are necessary for delivering the contract performance shall pass to Werth Messtechnik at the time they are created. The tools are thus to be considered as materials provided by Werth Messtechnik. Werth Messtechnik has the right, at its discretion, to demand delivery of the tools or to have them scrapped by the supplier at no cost to Werth Messtechnik. The scrapping of tools requires Werth Messtechnik's written consent.

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VI. Subcontracting

The subcontracting of orders to third parties is only permissible if Werth Messtechnik's written approval has been obtained in advance.

VII. Secrecy

1. The supplier undertakes to treat as business secrets all commercial or technical details that are not in the public domain that become known to it through the business relationship and to protect them from unauthorised inspection, use or loss. Drawings, stencils, samples, models or similar items handed over by Werth Messtechnik or manufactured at its cost remain its property and must not be made accessible to or handed over to third parties without its approval. The duplication of such items is permitted only in the context of operational requirements and in accordance with copyright provisions. The documents and items handed over to the supplier must be given back to Werth Messtechnik after the work has been completed, without the supplier having to be asked to do so and with its heeding the requirements of preserving secrecy, or must be safely destroyed by agreement with Werth Messtechnik. The supplier shall not hold back or preserve any duplicates, copies etc., unless it is obliged to archive them on the basis of statutory requirements. Subject to other rights Werth Messtechnik may demand they be handed over as soon as the supplier disregards its duties.
2. The Federal Law on Data Protection applies to the handing over of data. The supplier undertakes to obey the relevant laws with legally binding force. If any processing of data takes place then a separate agreement on the use of data is entered into with Werth Messtechnik.
3. Employees and subcontractors must give corresponding undertakings.
4. Unless something else is agreed in the order the duty to preserve secrecy continues to exist for 5 years after the supplies/services have been provided.
5. The supplier may only use Werth Messtechnik's trading name or trademarks when giving references or in cases of other disclosures if Werth Messtechnik has explicitly consented to such disclosures in writing.

VIII. Liability for defects

1. If no separate agreement has been reached on the time allowed for claims for defects the supplier guarantees that its performance under the order remains free of faults for a period of 36 months from acceptance of the performance as a whole by Werth Messtechnik or by end customers, in each case though not longer than 48 months after the handing over of the entire performance to Werth Messtechnik. The term of the limitation of liability in time applies irrespective of the operational period of use. Werth Messtechnik must immediately notify the supplier of faults as soon as they are established according to the realities of the normal business cycle concerned. In this respect the supplier waives the objection of claims for defects being delayed. A defect complaint interrupts the duration of the term of the limitation of liability for defect claims in respect of the defective part of the delivery until the defect has been completely eliminated. Deficiencies in legal title are barred in time after the statutory time allowed has expired.
2. The supplier is also liable within the scope of its liability for defects if it is not itself the manufacturer of what has been delivered or of parts thereof.
3. Werth Messtechnik may, at its option, assert statutory claims in respect of liability for defects, or demand substitute delivery or rectification. In the cases of substitute delivery or rectification the supplier is obliged to eliminate the defect immediately and at its cost at whatever location is stipulated or to provide a new performance. It must bear all the costs arising in connection with the rectification, including whatever travel costs of any kind become necessary, or ensure that such costs are reimbursed.
4. In urgent cases, for instance if there is danger in delay or in cases in which an obligation to perform on the part of Werth Messtechnik demands immediate rectification, the latter may carry out the rectification itself or through third parties, without setting any period of grace, at the supplier's cost. The same applies if the supplier has delivered after the onset of the delay.
5. The time allowed for claims on parts that have been replaced shall begin afresh. If more than 10% of the goods in a delivery display faults Werth Messtechnik has the right to reject the whole delivery, at the supplier's cost, without checking the other goods. Acceptance and payment by Werth Messtechnik do not signify that it is recognising the goods as being free of defects.
6. Statutory claims apply otherwise.

IX. Industrial property rights

1. The supplier is responsible for ensuring that the goods or services it delivers do not infringe any German or foreign industrial property rights. The supplier undertakes to indemnify the supplier and/or its customers if claims are laid on them on account of infringement of industrial property rights out of court or in the course of a legal dispute. In the event of a legal dispute the supplier must, on request, render legal assistance. Over and above that the supplier must reimburse all damage that accrues for Werth Messtechnik and/or its customers from their having trusted in the free usability of the goods or services delivered. The supplier only has to reimburse the damage suffered by a customer of Werth Messtechnik if the customer makes a claim on Werth Messtechnik in that respect.
2. The supplier is not liable insofar as it has manufactured the goods delivered or provided its services exclusively according to Werth Messtechnik's drawings and models and it did not know or have to know that the manufacturer of the goods or the provision of the services represented a legal infringement in the afore-mentioned sense.
3. The supplier shall, on request, quote all industrial property right applications that it utilises in connection with the goods or services delivered. If the supplier determines an infringement of industrial property rights or of applications for such, then it must inform Werth Messtechnik of that immediately and without having to be asked to do so.

X. Product liability, release, product liability insurance protection

Insofar as the supplier is responsible for any product damage it is obliged to indemnify Werth Messtechnik in this respect against third party claims for compensation in damages on first request, when the cause lies in its client and organisational sphere and when it is itself liable in its external relationships. Insofar as recall measures are advisable on account of any such product damage the supplier is accordingly obliged to reimburse the expenses necessary for that. The supplier undertakes to maintain a flat rate product liability insurance with a sum insured of €10 million per instance of damage to person(s)/damage to property. Other claims by Werth Messtechnik remain unaffected.

XI. Other agreements

1. If the supplier discontinues payments or if insolvency proceedings are applied for on its assets or if court or out-of-court composition proceedings are initiated, then Werth Messtechnik has the right to withdraw from the contract. If no withdrawal is made Werth Messtechnik may withhold an amount of at least 10% of the remuneration as surety for its contractual claims until the contractual period of time allowed for defect claims has expired.
2. Werth Messtechnik's legal domicile is the place of fulfilment for the supplies and services, unless something else has been contractually arranged.
3. Werth Messtechnik's legal domicile is the place of jurisdiction, but it also has the right to appeal to any other court that is competent under the law.
4. The law of the Federal Republic of Germany applies, exclusively, for any amplification of these conditions. Application of the United Nations Convention on Contracts for the International Sale of Goods is ruled out.
5. Should any one provision be or become ineffective then that shall not affect the effectiveness of the other provisions.