

## **General Terms and Conditions of Sale and Delivery of Diamond WireTec GmbH&Co.KG, D-69469 Weinheim, Germany**

### **§ 1 Scope of Application**

(1) These Terms and Conditions of Sale shall apply exclusively to entrepreneurs, legal entities under public law or special funds under public law within the meaning of Section 310 (1) of the German Civil Code (BGB). We shall only recognize terms and conditions of the Purchaser that conflict with or deviate from our Terms and Conditions of Sale if we expressly agree to their validity in writing.

(2) These Terms and Conditions of Sale shall also apply to all future transactions with the Purchaser, insofar as legal transactions of a related nature are concerned (as a precaution, the Terms and Conditions of Sale should in any case be attached to the order confirmation).

### **§ 2 Offer and conclusion of contract**

If an order is to be regarded as an offer in accordance with § 145 of the German Civil Code (BGB), we may accept it within two weeks.

### **§ 3 Documents provided**

We reserve the property rights and copyrights to all documents provided to the purchaser in connection with the placing of the order, e.g. calculations, drawings, etc. These documents may not be made accessible to third parties. These documents may not be made accessible to third parties unless we give our express written consent to do so. If we do not accept the orderer's offer within the period of § 2, these documents shall be returned to us without delay.

### **§ 4 Prices and payment**

(1) Unless otherwise agreed in writing, our prices are ex works excluding packaging and plus value added tax at the applicable rate. Costs of packaging will be invoiced separately.

(2) Payment of the purchase price shall be made exclusively to the account specified overleaf.

Unless otherwise agreed, the purchase price shall be paid net within 30 days after delivery or within 10 days after delivery with a 2% discount.

Interest on arrears shall be charged at a rate of 8% above the respective prime rate p.a.. We reserve the right to claim higher damages due to default.

4. if no fixed price agreement has been made, reasonable price changes due to changed wage, material and distribution costs for deliveries which take place 3 months or later after conclusion of the contract are reserved.

### **§ 5 Delivery time**

(1) The commencement of the delivery period stated by us shall be subject to the timely and proper fulfillment of the Purchaser's obligations. We reserve the right to plead non-fulfillment of the contract.

If the customer is in default of acceptance or culpably violates other obligations to cooperate, we shall be entitled to demand compensation for the damage incurred by us in this respect, including any additional expenses. We reserve the right to assert further claims. If the above conditions are met, the risk of accidental loss or accidental deterioration of the object of sale shall pass to the customer at the point in time at which the customer is in default of acceptance or debtor's delay. 3.

(3) In the event of a delay in delivery not caused by us intentionally or through gross negligence, we shall be liable for each completed week of delay within the framework of a lump-sum compensation for delay in the amount of 3% of the delivery value, but not more than 15% of the delivery value.

4. further legal claims and rights of the purchaser due to a delay in delivery remain unaffected.

### **§ 6 Transfer of risk in case of shipment**

If the goods are shipped to the Purchaser at the Purchaser's request, the risk of accidental loss or accidental deterioration of the goods shall pass to the Purchaser upon dispatch to the Purchaser, at the latest upon leaving the factory/warehouse. This shall apply irrespective of whether the goods are dispatched from the place of performance or who bears the freight costs.

### **§ 7 Retention of title**

(1) We retain title to the delivered goods until all claims arising from the delivery contract have been paid in full. This shall also apply to all future deliveries, even if we do not always expressly refer to this. We shall be entitled to take back the object of sale if the customer acts in breach of contract.

(1) As long as ownership has not yet passed to the Purchaser, the Purchaser shall be obliged to treat the purchased goods with care. In particular, he is obliged to insure it adequately at his own expense against theft, fire and water damage at replacement value (note: only permissible in the case of sale of high-value goods). If maintenance and inspection work has to be carried out, the Purchaser shall carry this out in good time at its own expense. As long as ownership has not yet been transferred, the purchaser must inform us immediately in writing if the delivered item is seized or exposed to other interventions by third parties. Insofar as the third party is not in a position to reimburse us for the court and out-of-court costs of an action in accordance with § 771 ZPO (German Code of Civil Procedure), the purchaser shall be liable for the loss incurred by us.

The customer shall be entitled to resell the goods subject to retention of title in the normal course of business. The Purchaser hereby assigns to us the claims against the customer arising from the resale of the goods subject to retention of title in the amount of the final invoice amount agreed with us (including value added tax). This assignment shall apply irrespective of whether the purchased goods have been resold without or after processing. The customer shall remain authorized to collect the claim even after the assignment. Our authority to collect the claim ourselves shall remain unaffected. However, we shall not collect the claim as long as the customer meets his payment obligations from the collected proceeds, is not in default of payment and, in particular, no application for the opening of insolvency proceedings has been filed or there is no cessation of payments.

3. the processing or transformation of the object of sale by the customer shall always be carried out in our name and on our behalf. In this case, the purchaser's expectant right to the object of sale shall continue to apply to the transformed object. If the object of sale is processed with other objects not belonging to us, we shall acquire co-ownership of the new object in the ratio of the objective value of our object of sale to the other processed objects at the time of processing. The same shall apply in the event of mixing. If the mixing takes place in such a way that the item of the customer is to be regarded as the main item, it shall be deemed agreed that the customer transfers co-ownership to us on a pro rata basis and shall keep the sole ownership or co-ownership thus created in safe custody for us. In order to secure our claims against the purchaser, the purchaser shall also assign to us such claims as accrue to him against a third party as a result of the combination of the goods subject to retention of title with a plot of land; we hereby accept this assignment. 4.

We undertake to release the securities to which we are entitled at the request of the customer insofar as their value exceeds the claims to be secured by more than 20%.

#### **§ 8 Warranty and notice of defects as well as recourse / manufacturer's recourse**

1. the purchaser's warranty rights presuppose that he has duly fulfilled his obligations to inspect the goods and give notice of defects in accordance with § 377 of the German Commercial Code (HGB).

2. claims for defects shall become time-barred 12 months after delivery of the goods supplied by us to our customer. The statutory limitation period shall apply to claims for damages in the event of intent and gross negligence as well as in the event of injury to life, body and health which are based on an intentional or negligent breach of duty by the user. Our consent must be obtained prior to any return of the goods. 3.

(3) If, despite all due care, the delivered goods show a defect which was already present at the time of the transfer of risk, we shall, at our discretion, either repair the goods or supply replacement goods, subject to timely notification of defects. We shall always be given the opportunity to remedy the defect within a reasonable period of time. Claims under a right of recourse shall remain unaffected by the above provision without restriction.

If the subsequent performance fails, the customer may - without prejudice to any claims for damages - withdraw from the contract or reduce the remuneration.

(5) Claims for defects shall not exist in the case of insignificant deviations from the agreed quality, insignificant impairment of usability, natural wear and tear or damage arising after the transfer of risk as a result of incorrect or negligent handling, excessive strain, unsuitable equipment, defective construction work, unsuitable foundation soil or as a result of special external influences which are not assumed under the contract. If the Purchaser or third parties carry out improper repair work or modifications, there shall also be no claims for defects for these and the resulting consequences.

(6) Claims by the customer for expenses incurred for the purpose of subsequent performance, in particular transport, travel, labor and material costs, shall be excluded insofar as the expenses increase because the goods delivered by us were subsequently transported to a location other than the customer's branch office, unless the transport is in accordance with their intended use.

(7) The Purchaser's right of recourse against us shall exist only to the extent that the Purchaser has not entered into any agreements with its customer exceeding the statutory mandatory claims for defects. Furthermore, paragraph 6 shall apply mutatis mutandis to the scope of the Purchaser's right of recourse against the Supplier.

#### **§ 9 Miscellaneous**

(1) This contract and the entire legal relationship between the parties shall be governed by the laws of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

2. the place of performance and exclusive place of jurisdiction for all disputes arising from this contract shall be our place of business.

3. all agreements made between the parties for the purpose of executing this contract are set forth in writing in this contract.