



## Terms and Conditions

### of Drahtwerk Waidhaus GmbH ("TCS")

August 2004 Edition

#### 1. Scope of Delivery Terms

1.1 The Terms and Conditions of Sale ("TCS") of Drahtwerk Waidhaus GmbH ("DW") shall only apply to contracts concluded between DW and companies ("B2B").

1.2 Products can be completely or partially manufactured by third parties. The TCS shall apply to deliveries and services ("Delivery") of DW ("Products") to the contracting party of DW ("Ordering Party" - "OP") on the basis of the contract ("Contract") concluded between DW and OP ("the Parties").

1.3 Terms and conditions of OP shall only apply insofar as they have been expressly approved in writing by DW. Provisions which differ in wording from these TCS - to the extent that they are not stipulated in the DW's whole offer - shall not apply.

#### 2. Offer, Reservation as to Obtaining Delivery Ourselves

2.1 Specifications of the Products are set out exclusively and finally in the "Technical Specifications" as set out in the Internet under [www.drahtwerk-waidhaus.de](http://www.drahtwerk-waidhaus.de), under "Product Range" valid at the time of the conclusion of the Contract.

2.2 DW shall reserve all rights of ownership and copyrights to all cost estimates, drawings and other documents ("Documents") included in his offer. The Documents may only be made available to third parties upon DW's prior approval and, should the offer not be awarded to DW, shall be handed over to him without delay. OP shall have no right of retention.

2.3 DW shall be committed to the offer for 1 month as of the date of the offer.

2.4 If the contractually agreed Delivery is not available on grounds that DW did not receive delivery from his own suppliers or DW's stock necessary for the Delivery is run down, DW shall be entitled to provide a Delivery which is equivalent in quality and price. Should DW be unable to provide a Delivery equivalent in quality and price, DW may rescind the Contract.

#### 3. Terms of Delivery

3.1 All prices are Ex Works of DW, Waidhaus, Germany (EXW according to Incoterms 2000) ("Place of Performance").

3.2 All prices are net prices in EUR plus the turnover tax valid at the time of performance of the service, without further deductions.

3.3 The prices shall be calculated based on the costs in DW's offer. In the event of changes in material prices, wages, freight, or other cost factors during the time period between order and delivery date, DW shall be entitled to adjust the prices.

3.4 Other objects, delivered to OP (e.g. spools, reels or pallets - summarised in the following as "transport material"), remain the property of DW. OP shall store these separate from other objects and, immediately, or at the latest upon DW's request, shall return these to DW, at its own expense. In the event of depreciation or loss, OP shall pay compensation. A possible, deposit fee invoiced to the OP, shall be voided if the OP is in delay with returning the items.

#### **4. Terms of Payment**

4.1 Invoices shall be payable immediately and without any deductions to the payment.

4.2 OP may only set off claims which are undisputed or have been finally determined in a legally binding manner.

#### **5. Finishing of OP's Components at DW**

5.1 Objects supplied to DW by OP for finishing or processing or for transformation ("Components") shall be stored and treated with DW's usual due care. There shall be no duty to separately store, to mark as component or to insure the components.

5.2 OP's processing clauses in relation to Components shall not apply.

5.3 Insofar as the Components are processed, or finished, or transformed, or combined, or mixed with other objects (in the following "Refinement"), DW shall gain part ownership of the Components in a share that results from the proportion of the component's value after refinement.

5.4 Notwithstanding further rights, DW shall be entitled to interrupt the Refinement or redelivery of Components to OP (irrespective of whether refinement took place or not), insofar and for as long as DW has claims against OP from the entire business relationship.

#### **6. Reservation of Title for DW's Products to OP after Delivery**

The parties agree to the following simple and extended reservation of title:

6.1 DW shall retain ownership of the delivered items ("Reserved Goods") until OP has fulfilled all his obligations from the business relation. Should the total value of DW's legitimate securities exceed the total value of all claims to be secured by more than 20 percent, DW shall, at OP's request release a corresponding part of the securities.

6.2 For the duration of the reservation of title, OP shall not be entitled to pledging or transfer of security.

6.3 OP may only re-sell the Reserved Goods within the scope of normal business operations and under the condition that OP receives payment from his customer ("Customer") or provides for the reservation that the transfer of ownership onto the customer does not take place until the Customer meets his payment commitments.

6.4 For the processing of Reserved Goods by OP the following shall apply:

6.4.1 OP shall be permitted to process or transform the Reserved Goods, or to mix or combine such with other movable objects (summarised in the following summarized as "Processing"); the Processing shall be performed for DW. OP shall keep safe the new object, which resulted from the

Processing ("Final Product"), for DW with the care of a prudent businessman. The Final Product shall be considered as Reserved Good.

6.4.2 DW's ownership of the Reserved Goods shall also remain valid during the manufacturing and after the completion of the Final Product. DW's ownership of the Reserved Goods shall continue as towards the Final Product; DW shall obtain common ownership of the Final Product in proportion of the value of the Reserved Goods to the total value of the Final Product at the time of processing.

6.5 OP shall, upon the conclusion of the Contract, assign to DW as security a part of his claims against his Customer arising from the resale or manufacturing of the Reserved Goods corresponding to the DW's claims against OP arising from the Delivery. This shall not affect DW's obligation to release set out in 6.1.

6.5.1 In the event that (1) OP disposes of the Reserved Goods together with other objects, without an individual price having been agreed upon, or, in the event that (2) OP combines the Reserved Goods with real estate, then OP assigns with priority above other third party claims to DW the part of the complete price claim towards the Customer, which corresponds to the Reserved Goods that were invoiced by DW; this shall also apply for combination.

6.5.2 When substantiating a legitimate interest, OP shall provide to DW such information and supply such documentation that is necessary for enforcing DW's rights against the Customer.

6.5.3 Until revocation, OP shall be entitled to collect the assigned claims in relation to the disposal of the Reserved Goods. If just reason is given, in particular, delay in payment, cessation of payment, commencement of insolvency proceedings, bill protest, or founded grounds for an over indebtedness or imminent insolvency of the Customer, DW shall be entitled to revoke OP's right to collect. Furthermore, DW can, upon prior threat notice while keeping to an appropriate deadline, disclose the security assignment, make use of the assigned claims, as well as demand the disclosure of the security assignment by OP towards the Customer.

6.6 In the event of a levy of execution, seizure or any orders of third parties OP shall inform DW without delay.

6.7 In the event of breach of duty, in particular a default of payment, on the part of the OP, the following provisions shall apply:

6.7.1 After unsuccessful expiry of an appropriate deadline set by DW for the rectification of the default, DW shall be entitled to rescind the Contract and to take back the Reserved Goods; OP shall be obliged to hand over the Reserved Goods. This shall not affect the statutory regulations concerning the dispensability of fixing a time-limit.

6.7.2 The enforcement of the reservation of title and the taking back of the Reserved Goods is not subject to a prior rescission of the Contract on the part of DW; such action or a levy of execution of the Reserved Goods by DW shall not be considered as a rescission of the Contract, unless expressly stated otherwise.

## **7. Delivery time**

7.1 Compliance with the agreed Delivery time requires the timely receipt of all documents and items (in particular of cathodes), necessary permissions and releases, in particular concerning blueprints to be provided by OP, as well as the observance of the agreed terms of payment and other

obligations by the OP. If these conditions are not fulfilled, Delivery times shall be appropriately extended; this shall not apply if the delay is caused by DW.

7.2 If Delivery times are not complied with due to force majeure, e.g. mobilisation, war, riots or similar events, e.g. strikes or lock-outs, delivery times shall be appropriately extended.

7.3 Should DW be in delay, OP may, if he can substantiate any damage on his part resulting from such delay, claim a compensation for each completed week of delay amounting to 0.5 percent of the price of the part of the delivery which could not be used due to the delay, but not more than a total of 5 percent of the said price.

7.4 Any claims for compensation for delayed Delivery or claims for compensation to replace a Delivery on the part of OP which are beyond the limits of 7.3, shall be excluded in all events of delayed Delivery. This shall also apply in the event of the expiry of a deadline set by OP. It shall not apply, however, where there is obligatory liability, in the event of willful misconduct or gross negligence or due to injury to life, body or health. OP may only rescind the Contract if the Delivery delay is caused by DW. No shift in the burden of proof to the detriment of OP is connected with the above provisions.

7.5 OP shall only have a right of rescission if he has granted DW an appropriate time deadline for performance and declares that he shall refuse to accept the performance upon the expiry of the deadline, and after the deadline has unsuccessfully expired.

7.6 At DW's request, OP shall declare within an appropriate time limit whether he shall rescind the Contract due to the delay or whether he insists on delivery.

7.7 If, at OP's request, dispatch or consignment is delayed for more than a month after readiness to dispatch has been expressed, DW may, for each beginning month, charge OP 0.5 percent of the net price of the Delivery, but not more than 5 percent of the total net price, for storage costs. The Parties shall remain at liberty to prove that storage costs were higher or lower

## **8. Passing of Risk**

8.1 Subject to the provisions of 8.2 the passing of risk onto OP shall take place at the moment the Products have been made available for dispatch by DW at the Place of Performance.

8.2 The passing of the risk onto OP shall take place at the moment the dispatch or the beginning of assembly or installation are delayed due to reasons caused by OP or the occurrence of any other events causing a default in acceptance by OP.

## **9. Acceptance**

OP shall accept the Delivery even if it shows insignificant defects. Partial Deliveries are possible, unless such is not acceptable for OP.

## **10. Material Defects**

DW shall be liable for all material defects of newly manufactured products according to 10.1 - 10.13. Should the item delivered not be a newly manufactured product (e.g. second-hand goods, samples, exhibits, seconds products), DW's liability for material defects shall not apply.

10.1 The parts of the Delivery concerned which show material defects within the term of limitation (if such defects were not caused after the passing of the risk) must, at DW's discretion, be repaired at DW's cost, newly delivered or newly provided ("Subsequent Performance").

10.2 The Subsequent Performance does not initiate a new term of limitation (10.3).

10.3 The term of limitation for the liability for material defects is 24 months. This shall not apply where paragraphs 438, section 1, No. 2, 479, section 1 and 634a, section 1, No. 2 of the BGB [German Civil Code] provide for longer terms, and in the event of injury to life, body or health, in the event of intentional or gross breach of duty by DW or fraudulent concealment of a defect. This shall not affect the statutory regulations concerning the suspension of the running, the suspension or the new beginning of the periods of limitation.

10.4 OP shall complain about material defects to DW without delay in writing. The complaint must include information on the data of the concerned Delivery - product number, delivery note, delivery date, spool identification number, number of DW's confirmation of order, date of manufacture, description of the fault or defect.

10.5 In the event of complaints of defect OP may retain payments to an extent appropriate in proportion to the defects occurred. OP shall only be entitled to retain payments if he is able to assert a complaint of defect justified beyond any doubt. If the complaint of defect proves to be unjustified, DW shall be entitled to request payment of any expenses incurred to him by such complaint.

10.6 DW must be granted the opportunity of Subsequent Performance within an appropriate period of time. Otherwise he shall be freed of any liability for material defects.

10.7 In the event of unsuccessful Subsequent Performance, OP may - notwithstanding any provisions on claims for compensation (12.) rescind the Contract or reduce the payment.

10.8 Warranty claims shall not be admissible in the event of insignificant deviations from the agreed composition, insignificant impairment of the practicability, natural wear and tear or damages caused after the passing of risk as a result of faulty or negligent treatment, excess utilisation, inappropriate service equipment, or damages caused by exceptional external factors, which are not provided for in the Contract. Should OP carry out inexpert alterations or repairs, no warranty claims shall be admissible for such alterations, repairs or consequences thereof.

10.9 Defects in part of the delivered goods shall not entitle OP to object to the complete supply, unless the partial supply is of no interest to OP.

10.10 Increased or short deliveries of up to 10% of the ordered goods cannot be objected to.

10.11 Any claims of OP for expenses necessary for the Subsequent Performance, in particular transportation, labour and material costs, shall be excluded, if such expenses should be caused because the Delivery has been transferred to a place other than the Place of Performance.

10.12 Claims under a right of recourse of the OP against DW shall only be admissible insofar as OP has not agreed with his buyer any arrangements beyond the scope of the statutory warranty claims. For the scope of the claims under a right of recourse according to paragraph 478, section 2 of the BGB [German Civil Code], 10.8 shall apply respectively.

10.13 Any further claims based on material defects, and claims other than those settled under 10. of OP against DW shall be excluded. For any claims for damages 12. shall apply.

## **11. Impossibility, Adjustment of Contract**

11.1 Should delivery be impossible, OP shall be entitled to request compensation, unless DW is not responsible for the impossibility. However, OP's claim for compensation shall be limited to 10 percent of the value of the part of the Delivery which cannot be used due to the impossibility of DW. This shall not apply where there is obligatory liability due to willful misconduct, gross negligence, initial inability or injury to life, body or health. No shift in the burden of proof to the detriment of OP is connected with the above provisions. OP's right of rescission shall remain unaffected.

11.2 Should events of force majeure (7.2) substantially alter the economic significance or the contents of the Delivery or substantially affect DW's business, the Contract shall be appropriately adapted under good faith. If this is not economically acceptable, DW shall have a right of rescission. Should DW wish to make use of such right, he has to notify OP after realisation of the consequences of such incidents without delay, also if the Parties had agreed to an extension of the Delivery time beforehand.

## **12. Other Claims for Compensation**

12.1.1 Claims for compensation of OP, irrespective of their cause in law, but in particular claims arising from the breach of duties resulting from obligation or tort, shall be excluded.

12.1.2 This shall not apply where there is mandatory liability, e.g. according to the law on product liability or in the event of willful misconduct, gross negligence, injury to life, body or health or the infringement of substantial contractual obligations.

12.1.3 However, compensation for damages for the infringement of substantial contractual obligations shall be limited to foreseeable damages typical for the Contract, unless there is liability for of wilful misconduct or gross negligence, injury to life, body or health.

12.2 The exclusion or limitation of DW's liability as set out in 12. shall also apply to the personal liability of his workers, employees, co-workers and other persons employed, but not to the personal liability of legal representatives and executives

12.3 The claims for compensation OP is entitled to according to 12., shall expire upon the expiry of the term of limitation applying to material defects according to 10.3 In the event of willful misconduct and claims for damages in connection with the law on product liability the statutory terms of limitation shall apply.

12.4 No shift in the burden of proof to the detriment of OP is connected with the provisions of 12.

## **13. Confidentiality**

13.1 The Parties shall undertake not to make available to third parties any documents, knowledge and information, tools, moulds, samples, models, profiles, drawings, standard sheets, photomasters and other technical documentation ("Information") received within the scope of the contract and irrespective of the carrier medium without written approval of the respective other party, or use them for other than contractual purposes. Such Information must be secured against unauthorized inspection or use. With reservation of further rights, each party may request the return of such Information, should the other party breach such duty.

13.2 The obligation according to 13.1 shall commence upon the first receipt of Information and expire 36 months after the termination of the Contract.

13.3 The obligation according to 13.1 shall not apply to Information which is generally known or which was known to the respective party at the moment of receipt without the party being obliged to confidentiality or to Information which was passed on by a third party authorised to submit such Information or which was developed by the receiving party without utilisation of confidential Information of the other party.

#### **14. Jurisdiction**

The exclusive place of jurisdiction - also for cheques and notes receivable - shall be Weiden, Oberpfalz (Upper Palatinate), Germany.

#### **15. Applicable Law**

The material law of the Federal Republic of Germany shall apply. The UN Convention on Contracts for the International Sale of Goods of 11 April 1980 shall not apply.