



Kataster

conditions of sales and delivery Stand 1.1.2009

Nummer: **L-QSU744-03a**

Datum: **01.09.09**

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Verfasser: J.Eyring

Freigabe: M.Winkler

I. General

- (1) The following conditions will exclusively apply to all our offers and to all contracts concluded with us so far or in the future — including consulting — and other services rendered under a contract — even though reference will not be made in each individual case notwithstanding however, any agreement in writing to the contrary. Standard-form contract conditions of purchasing party will not be valid. Such conditions are herewith objected to.
- (2) Our offers are conditional quotations. Only our order confirmations or confirmatory letters are decisive to the terms of contract. Oral statements and collateral agreements made by telephone by our representatives and employees are valid only if expressly confirmed in writing by our head office.
- (3) If not otherwise agreed products will be manufactured according to current Wonik Quartz Europe product specifications.
- (4) Goods ordered by you which have not been allocated by you for shipment yet will be classified as delivery on call. The duration of orders for delivery on call is limited to a maximum of 12 months. You have the option to allocate the quantity for delivery subject to an appropriate period of notice. In case of orders for delivery on call, we are not obliged to carry the respective goods on stock unless an agreement in writing has been concluded.
- (5) A change or cancellation of orders/orders for delivery on call given will always be subject to our approval in writing. Any goods produced so far shall be accepted, in any case; in all other cases, at least a compensation order shall be placed with us.

II. Shipment, passing of risk

- (1) Shipment will be carried out at our discretion. Special requirements will, in any case, be at the expense of buyer.
- (2) The risk will — also in case of delivery freight prepaid agreed upon — pass onto buyer as soon as the respective shipment has left our warehouse or any other contractual place of dispatch. In case dispatch is delayed by buyer or by its authorized agent, the risk of loss or damage to the goods will pass onto buyer with the date of readiness for dispatch.
- (3) In case we are responsible for loading and insurance we shall be liable only to the extent the forwarding, agent or insurer, respectively, is liable towards us.

III. Prices, terms of payment

- (1) Prices quoted are net prices ex place of dispatch in Euro. Orders with a net value below Euro 200,- will be subject to approval by us. Such orders may be rejected or subject to extra charges because of falling below minimum net order value. Payments shall be effected without deduction free of charge to our paying agent unless otherwise agreed upon. Freight-, packing- and insurance, costs will be billed for all sale orders.
- (2) Our terms of payment are printed onto our acknowledgement. Grace periods are calculated from the date of invoice. Payment shall be due and payable without the need for reminders. Any other special arrangement shall be concluded in writing.
- (3) Any setoff shall be allowed only with regard to claims acknowledged by us or claims valid in law. Liens are excluded unless based upon the same contractual relation. In case a lien exists, payments of buyer may only be withheld until counterclaims have been settled to an extent appropriate to the amount of counterclaims.
- (4) Periods of delay in payment shall bear interest at the rate we are obliged to pay the company's bank with respect to uncovered advances. If buyer fails to pay at the due date or circumstances shall become known after conclusion of contract impeaching his credit standing, we shall have the right to immediately fix a due date with regard to any and all outstanding debts including those for which bills have been issued and to carry out outstanding deliveries only against payment in advance or sufficient securities cancelling any grace period notwithstanding. However, any further claims we might have with respect thereto.

IV. Delivery, delivery periods, taking delivery

- (1) Any delivery period confirmed or notified by us is based upon information to the best of our knowledge existing at the time of giving such confirmation. The statement of the calendar week always refers to the date of the planned completion, not to the date of buyer's receipt. Therefore, any possible delay of delivery due to circumstances beyond our control or due to Force majeure, strike or lockout or any other unforeseen event such as administrative orders, lack of energy or raw materials or due to a stop in production at our plant or that of a subcontractor will automatically result in a prolongation of the delivery period.
- (2) In case delivery will become impossible at a later date or unreasonable for us, we shall have the right to withdraw from the contract in whole or in part and buyer will not be entitled to any claim for damage whatsoever.
- (3) In the event of a delay in delivery due to any of the foregoing reasons, customer shall be entitled to withdraw from the contract upon expiration of a reasonable extension of time.
- (4) With respect to transactions which are not trading operations, claims for damages for reasons of delay in delivery or subsequent impossibility to deliver due to circumstances caused by us will be limited to the evidenced damage, with respect to compensation for damages due to failure to perform to a maximum, however, of 5 % of our invoice value of that part of the goods or services not delivered in



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time or impossible to be delivered by us: with respect to compensation for damages due to late arrival to ½ % or to a maximum of 5 % of the purchase price of that part of the goods or services which will be unable to be expediently utilized due to the delay in delivery.

- (5) If buyer fails to take delivery in time, any costs resulting there from shall be at buyer's expense including the lump-sum compensation for damages due to non performance in the amount of at least 20 % of the purchase price.

V. Customer's complaints, guarantee

- (1) Customer's complaints will only be taken into consideration if WQE is able to inspect and test the goods for which a complaint is filed. Rejected goods may only be returned to us upon our respective approval in writing.
- (2) Buyer is obliged to inspect the goods received immediately upon delivery to him with regard to quantity and quality. Obvious faults be shall notified to us in writing within a period of 6 days. Other defects have to be notified to us in writing within 3 days after discovery at the latest, however, 6 months after delivery. Standard or immaterial technical deviations or unavoidable deviations in the quality equipment etc. will not be considered as reasons to reject delivery of goods.
- (3) In the event of justified complaints, we will be liable to repair or replace those parts of our choice made to the best of our judgment which have proven to be incalculable or materially impaired in their usefulness after buyer has taken delivery of such goods due to circumstances occurred before the passing of risk.
- (4) Buyer will be entitled to withdraw from the contract or to reduce the purchase price in the event we fail to fulfil our obligation to repair or to replace the goods concerned through our negligence or in case repair or replacement has been unfoundedly finally rejected by us or has finally failed.
- (5) We shall not be liable for the suitability of our goods for any specific application unless such application is mentioned in a written instruction attached to the goods or unless such specific application has been expressly confirmed by us in writing. In any case, buyer shall be obliged to teal in advance the suitability of our goods for the proposed application ion in each individual case.
- (6) In the event of manufacturing according to customer's drawing, guarantee of WOE will be limited to the performance of contract according to the drawing supplied: in the event of design- and development work, guarantee shall be limited to the extent that the product of WOE corresponds to the respective state of the art.
- (7) Our guarantee does not cover any damage occurring after the passing of risk for reasons of negligent of false treatment, of modifications and repair work incorrectly carried out by buyer or by any third party without our consent or due to excessive stress or caused by chemical, electrochemical or electrical influences unless resulting from negligence on our part.
- (8) We or our vicarious agents will not be liable for damages occurring within the framework of our guarantee for reasons of violation of contractual deeds of covenants, resulting from faulty consulting, tort, negligent violation of the obligation to remedy a defect or to replace damaged goods or due to any other legal reason unless caused by malice or gross negligence on our part.

VI. General liability

- (1) Any claims for damages of any kind and nature made against us or against our vicarious agents — in particular for reasons of violation of contractual deeds of covenants, for negligence upon conclusion of contract or for tort — are excluded unless resulting from malice or gross negligence on our part or unless nonliability is unlawful for other reasons.
- (2) In any and all cases — including those referred to under paragraph V 8 - In which liability for trading transactions for reasons of gross negligence and for those and other operations for other reasons than gross negligence is not excluded but limited to a certain amount, liability shall always be limited to the damage evidenced and .foreseeable at the time of contract conclusion, at the most, however, to the sales price of the product supplied by us to which such claims for damages refer or from which such claims for damages result.
- (3) In any case, we shall only be liable within the scope of our employers liability insurance in effect at the respective time.
- (4) In case material supplied by buyer/ordering party for finishing, processing or repair work will be damaged or will become unfit during the finishing-, processing- or repair process. WQE will only be liable in case such damage results from gross negligence, limited, however, to 10 % of the processing value unless liability will be unlimited pursuant to mandatory statutes.

VII. Reservation of proprietary rights

- (1) We reserve our proprietary rights to the goods supplied by us until payment has been received in full with regard to any and all outstanding debts under the business connection and until all bills and have been met or collected, respectively. Buyer may dispose of or process goods only in the course of proper business manners. This right will terminate in the event of delay in payment or in case of a material worsening of buyer's financial status. Buyer will not have the right to pledge or give in security the conditional goods.
In the event of pledging or seizure of the goods or any other procedure initiated by any third party, buyer shall immediately inform us by registered letter submitting to us any and all records and documents necessary for an intervention. Any costs incurred with respect to such intervention shall be borne by buyer.
- (2) The risk of loss, wear or damages during the period the proprietary right is effective shall be borne by buyer.
- (3) In the event of delay in payment or in case of a material worsening of buyer's financial status, we will have the right to take back the goods and buyer will be obliged to deliver the same without automatically availing ourselves of our right to withdraw from the contract.



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- (4) Insofar as the goods supplied will remain the property of WQE a possible finishing or processing for the purpose of producing a new product will be carried out by the order of WQE and on its behalf without involving any liability by us towards any third party.
- (5) Any claim based upon the resale of the conditional goods is herewith assigned to us, irrespective of the fact whether such resale is carried out without or upon completion of processing or mixing of the conditional goods with other goods or materials which are not our property. In case of disposal of the conditional goods upon completion of processing or in connection with other goods which are not our property and together with other goods which are not our property, the assignment of debts will be effective in the amount of the invoice value of our conditional goods. Buyer is only entitled to collect the assigned debts as long payments by buyer to us are carried out in due course. In case the value of securities provided to us exceeds the total value of the debts to be secured by more than 20% we will be obliged, at the request of buyer to release securities at our option.
- (6) Goods supplied by us will only be taken back by us if previously approved of in writing. The goods must be in perfect condition and delivered to us freight and insurance prepaid. Goods taken back will be credited to buyer, if still packed in the original packing, less 25% for handling end warehousing. The amount of credit for goods taken back which have already be unpacked and/or used by customer will depend upon the respective condition and reutilization through us.

VIII. Place of performance, jurisdiction, other law in force, other clauses

- (1) Place of performance for delivery and payment is Geesthacht. Any dispute — including actions on bills and cheques — shall be settled under the jurisdiction of Geesthacht in case buyer is general merchant, a body corporate or special fund or does not have a general jurisdiction in the Federal Republic of Germany. We have the right — at our discretion — to institute an action at the place of business of buyer.
- (2) The contract is subject to German law. In case of interpreting trade stipulations, the incoterms of 1953, revised edition, shall apply. The regulations of the Hague Convention on Sale/Purchase Law of July 1 1964 as well as the German implementing provisions related thereto are excluded.
- (3) Insofar as trading transactions are referred to in the above conditions, such transactions with body corporate will correspond to those with special funds.
- (4) The legal invalidity of any individual provision of contract will not impair the validity of the other provisions.