

## **wek-tec terms and conditions of sale:**

wek-tec Propriety (and later can be as "wek-tec GmbH (iG)", , Gottmadingen, Germany) is herein referred to as the "Seller" and the customer or person or entity purchasing products ("Products") from Seller is referred to as the "Buyer".

**1. CONDITIONS OF SALE:** All orders for products, software, and/or services (e.g. equipment rents) shall be the subject to these terms and Conditions of sale. Terms and Conditions of sale are subject to change without notice. No modified or other conditions will be recognized by Seller unless specifically agreed to in writing by an authorized officer of Seller. Failure of Seller to object to provisions contained in any order or other communication from a Purchaser shall not be construed as a waiver of these conditions nor an acceptance of any such provisions.

**2. QUOTATIONS, PRICES:** Formal written quotations are subject to the Terms and Conditions of sale listed herein. Written quotations automatically expire thirty (30) calendar days from the date issued, unless otherwise noted on the quotation, and are subject to withdrawal by notice within that period.

Informal e-mail or oral quotations for budget purposes are also the subject to the Terms and Conditions, and have to be later replaced with formal quotations, with whatever corrections will deem to be necessary at the time of sending this written quotation.

Formal Quotations (OFFERS), besides prices, contain a summary of the technical data on an offered product, terms of payments, a sample of a letter of Product acceptance and the current version of these Terms. The formal written quotation replaces all previous quotations, sent up to a Buyer up to the date and it the only one to be used by Buyer for Ordering. If any later changes in such Offer is desired by Buyer, it is to be submitted in writing for issuing a newer formal quotation with requested modifications and with a new price.

Current and future Prices are subject to change as per business conditions, unless these are already submitted in a formal offer.

**3. ORDERS:** Buyer is required to submit its Company's formal, numbered Purchase Order, referencing the Seller's quotation, the description of the item(s) to be purchased, its VAT number, and the shipping address, or specified freight carrier information. Each order is to be confirmed by a Seller.

**4. TERMS OF PAYMENTS:** Unless otherwise specified by Seller in its Offer, terms are paid thirty (30) days from date of Seller's invoice. If these are payment with progressive payments and a down-payment, Buyer has to follow agreed-upon payments in order to keep the execution of the order. If payments are stopped or not fulfilled as per the Agreement, Seller shall have the right to terminate this Order or to suspend further performance of the Order.

All Buyer Purchase Orders of custom-made products is to be accompanied by an advance down-payment (to be negotiated, usually 40% of the value of the product(s) being purchased). Subsequent payments is to be made in accordance with the Seller's formal written quotation.

Overdue payments shall be charged interest at lesser of the rate of 18% per annum or the maximum permitted by law. If the Seller is required to retain a collection agency or attorney to collect overdue payments, all reasonable collection costs, including attorneys fees, shall be payable by the Buyer. The Buyer hereby grants to the Seller a security interest in the products for recovery of the purchase price and fees upon the Purchaser's default.

**5. CERTIFICATIONS:** Under the German laws Seller is obligated to provide its own safety certificate known as CE. This is a legal confirmation that the system is safe to operate in its original enclosure. By issuing this certificate, Seller takes responsibility for damages which could result if the unit is unsafe to operate and for that carries a liability insurance. Seller provides such CE certification, and also makes tests for Electro-Magnetic noise by in-house means - it is to assure a stable work of electronic equipment (like PC, etc) within 1-3 m from the Seller products. Seller Products also comply with the European GMPs ( "Good Manufacturing Practices") whenever it is possible.

**6. LOCAL PERMITS and TAXES:** If Local or State permits are necessary to comply with Seller's products, it is the Buyer's full responsibility to arrange all these permits at its own expense. Buyer is to upfront inform Seller about any modifications to be made so to comply with such permits, which Seller will incorporate in its Products at Buyer's additional expense.

Any manufacturer's tax, use tax, sales tax, ad valorem tax, or tax of any nature whatsoever, which may be assessed against this order, shall be added to the price quoted or invoiced and shall be paid by the Buyer.

**7. LIMITED WARRANTY:** Warranties are granted to the original Buyer and are non-transferable and non-assignable. Seller warrants that the Products manufactured by Seller will be free from defects in material and workmanship under normal use and regular service and maintenance for a period of one (1) year from the date of shipment, dependent upon the model of product, as more specifically set forth in the Instruction or Operating Manual covering the use of such model of Product. Products purchased by Seller from a third party for resale to Buyer shall carry only the warranty extended by the original manufacturer. All electronic components and lamps are warranted for 90 days.

If within thirty (30) days after Buyer's discovery of any warranty defects within the Warranty Period, Buyer notifies Seller thereof in writing, Seller shall, at its option, repair, correct or replace F.O.B. point of manufacture or refund the purchase price for, that portion of the Products found by Seller to be defective; provided, that buyer's exclusive remedy for a breach of this warranty as to converters shall be limited to one time replacement of the converter. Failure by Buyer to give such written notice within the applicable time period shall be deemed an absolute and unconditional waiver of Buyer's claim for such defects.

**8. WARRANTY and (CE) EXCLUSIONS** are in force when:

- a. defects made by an accident at Buyer or in violation of operating instructions.
- b. transportation damages,
- c. an inside intervention by Buyer for any purpose, for unauthorized repairs, except changing lamps.
- d. The use of a Product outside the purpose / application designated by Seller.
- e. Seller does not warrant the exactness and applicability of the results reached with our Products but warrants only technical functions of the Products.

**9. SHIPMENT AND RISK OF LOSS:** The Seller's products are sold F.O.B. point of shipment. Transportation to the destination is the responsibility of the Buyer, unless it is in EU. For exports outside EU Seller will prepare all documents necessary for shipment, including International Waybill, Uniform Commercial Invoice, and Shipper's Export Declaration (if needed) in accordance with the German Agreements with the rest of World Countries. The Buyer is solely responsible for payment of customs taxes and import duties. The Seller's quoted prices do not include these costs.

Seller uses the Schenker/DB AG with its shipment insurance coverage including for packaging. Their services are charged upfront to Buyer unless Buyer offers its shipping agent and takes a full responsibility for shipping (in writing, while placing its order).

Buyer is to read Seller's acceptance and un-packaging instructions and shall not sign-off a package damaged by a carrier - it is the buyer responsibility to hold the shipment carrier for any damages by filing respective damage forms. Claims for all shortages, damage, breakage, or delays must be made to the carrier by the consignee immediately at the delivery (if damages are visible). The Seller, however, will endeavour to assist Buyer in every way to secure a satisfactory adjustment of claims. In cases of concealed damage, it is essential that such damage be reported to the carrier within a period of one week or less.

If a Buyer rents a Product from Seller, the Buyer takes a full financial responsibility for the Product, including for all repairs if it is damaged by a Buyer or if it is loss, etc.. Seller has the right to bill the Buyer for any pro-rated time of rent till the Product price is fully recovered by Seller.

Each system is delivered with an acceptance form, which is also send as a part of the offer. This form has to be signed and send within 20 days from the date of delivery. If it is not signed while no complain is send within these 20 days, the delivered system will be considered as fully accepted.

**10. CANCELLATIONS and REFUNDS:** Buyer may cancel orders only upon reasonable advance written notice and upon payment to Seller of Seller's cancellation charges such as:

- a. Any and all work that can be completed within thirty (30) days from date of notification to stop work on account of cancellation shall be completed, shipped, and paid for in full.
- b. For work in process, and any materials and supplies procured or for which definite commitments have been made by the Seller in connection with the order, the Buyer shall pay the

Seller for actual costs in accordance with good accounting practice, plus 15%.

c. The Buyer shall have the right to acquire title to all tangible property, including partially finished components, assemblies, subassemblies, raw material, tooling and fixtures, purchased or manufactured directly under the cancelled contract. The Buyer shall bear all costs associated with packaging and removal of this property. The Buyer shall forfeit all title to such property not removed within thirty (30) days after notification of cancellation.

d. Parts of down-payment which are to pay already ordered sub-systems or work, are not refundable.

e. Minimal rental fee and both ways shipping are not refundable, once a rent has been started.

**11. RETURNS:** IN NO CASE IS MERCHANDISE TO BE RETURNED WITHOUT FIRST OBTAINING THE Seller'S WRITTEN PERMISSION AND RETURN INSTRUCTIONS. Any merchandise returned and not authorized will remain the property of the sender and the Seller will not be liable for its loss by fire, theft or damage.

Products custom manufactured for Buyer is not returnable. Standard Products, in an unused and undamaged condition, subject to written authorization above, may be returned at Buyer's expense within thirty (30) days to get refund or credit, minus a restocking fee of 25%. All transportation charges shall be borne by the Buyer. Returned merchandise must be securely packed to reach the Seller without damage. Any cost incurred by the Seller to return the product to saleable condition will be deducted from the Buyer's credit.

**12. Warrantee and Rental REPAIRS:** will be done only in the time of warranty (or rentals) after a written confirmation. Requests to repair malfunctions after the warrantee is expired cannot be accepted even the unit is claimed as idling during the warrantee time.

For any (including rental) repairs the customer has to ship the unit to Seller at his own costs. Seller will determine a cause of a malfunction and if it is covered by the warrantee. If so, Seller will repair the unit for free and will ship it back at Seller costs. If not, Seller will send an offer for repairs. If a customer accepts it, he has to place his Purchase Order for repairs and to ship it back at his cost. If a customer will not accept repair terms, he has to take the unit back at his own costs within 10 working days. After this time Seller will no longer has a responsibility for this unit.

**13. FORCE MAJEURE:** The Seller shall not be considered in default in performance or for non-performance of its obligations hereunder to the extent that performance is delayed or prevented by causes beyond the control or without the fault of the Seller including causes such as acts of Nature, hostilities, strikes, fire, flood, transportation delays or losses, disruption of or substantial increase in the cost of supplies and parts, shortages of labour, fuel, raw material or machinery; or technical failure where Seller has exercised ordinary care in the prevention thereof; or, unforeseen circumstances or any events or causes beyond Seller's reasonable control, also because of acts of the Buyer including delay in performing its obligations, or because or by reason of any law, proclamation, regulation or ordinance of any government or governmental agency, or other events or occurrences beyond the Seller's ability to control or without the fault of the Seller.

**14. EXCUSE OF PERFORMANCE, FORCED CHANGES, LEGAL DOMICILE:** If Seller determines that its ability to supply the total demand for the Products, or to obtain material used directly or indirectly in the manufacture of the Products, is hindered, limited or made impracticable due to causes set forth in the preceding paragraph, Seller may allocate its available supply of the Products or such material (without obligation to acquire other supplies of any Products or material) among its purchasers on such basis as seller determines to be equitable without liability for any failure of performance which may result therefrom.

For "one-of-a-kind systems" the Seller's only obligation is to put "it's best" to build a custom system as described in the offer: Seller reserves the right to make whatever changes it will find necessary to assure a system's performance to be as close as technically possible to the Order within the Seller's financial, technical and time limitations, e.g. to replace certain parts, which either turned out not performing for specific tasks, or could not be delivered in time or simply no longer available on the market, or to change some designs or software, etc. Seller is to inform a Buyer of such unforeseen limitations and the Seller's decision on changes. In absence of Buyers objections or it's own reasonable solutions to such unforeseen problems, the Seller is to deliver the ordered system as it is deemed to be possible to build by sole considerations of the Seller. Buyer has to accept any such unforeseen changes without holding Seller liable for it.

**15. PROPRIETARY INFORMATION, PATENTS:** The Seller is in the business of custom and semi-

custom low volume products, often delivered on an confidentiality base with a signed Mutual Non-Disclosure Agreement (MNDA) to protect both Buyer and Seller. The Buyer should be aware, that Seller has introduced its own innovations, publications, congress reports and also patents in the field of its expertise. Therefore some of Seller's Products could be patent-able, or, just vise-versa, could be viewed as in a possible conflict with existing patents.

Therefor Buyer cannot use proprietary designs of Seller for its own benefits, or for benefits of third parties, without a signed Agreement with the Seller on transfer of respective rights. Buyer is to be liable for all losses resulted from such a violation and for all legal costs as to be determined in the German Court of Law.

On another side, Seller assures Buyer that the Products sold, except as are custom-made specifically for Buyer according to Buyer's specifications, do not infringe any valid US or EU patent or copyright as of the date of shipment. Buyer is to promptly notify Seller of any claim in which such infringement is alleged and cooperate fully with Seller to make whatever changes so to avoid such an infringement, within technical, financial and time limitations of both Seller and Buyer.

#### **16. LIABILITY AND INDEMNIFICATION:**

The Buyer is to use Products of Seller strictly in accordance with its User Manual and to request a paid training, if finds difficult to understand it.

Buyer is obligated to take over and/or ward off all reclamations, coming to the Buyer from third parties who used equipment or processes incorporated in systems build by a user of Buyer's Products, sub-systems, processes or OEM products. By incorporating Buyer's purchased items in his product line, Buyer assumes a full responsibility for his overall product lines.

The Seller shall not be liable for a loss of prospective profits, incidental costs, or special indirect or consequential damages arising from the use of these products or software. The Buyer shall hold the Seller free and harmless from all risk and liability for expense, loss, damage or injury to persons or property of Buyer or others, or death of any person, arising out of use or possession of any product or software sold hereunder.

#### **17. GENERAL PROVISIONS:**

No change, modification, rescission, discharge, abandonment, or waiver of these terms and conditions shall be binding upon the Seller unless made in writing and signed on its behalf by a duly authorized representative of Seller. No waiver by either party with respect to any breach or default or of any right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound.

Seller reserves the right to update any part of these Terms without affecting the validity of unchanged parts, and always sends to Buyer its latest update, by that replacing older versions, if those were at the Buyer's disposal from prior offers.

#### **18. APPLICABLE LAW:**

This Agreement is entered into in the State of Baden-Württemberg, The Federal Republic of Germany, and shall be interpreted in accordance with the General laws of Germany, with no consideration given to conflict of other laws and rules, regardless of the places of execution or performance.

Buyer and Seller agree that the proper venue for all actions arising in connection herewith shall be in the city of Singen (or Konstanz), State of Baden-Württemberg, Germany.

No action, regardless of form, arising out of transactions relating to this contract, may be brought by either party more than one year after the cause of action has accrued.

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