

GENERAL TERMS AND CONDITIONS (AGB) Welte GmbH UPDATE: January 2018

§ 1 Scope

(1) These conditions of sale apply exclusively and only to companies, legal entities of the public law or special funds under public law within the meaning of § 310 (1) BGB. Conflicting or conditions of the customer deviating from our conditions of sale, we only accept if we explicitly agree in writing.

(2) These Terms of Sale also apply to future business with the customer, as far as legal transactions are concerned related type acts.

§ 2 Offer and conclusion of contract

If the order is to be regarded as an offer according to § 145 BGB, Welte GmbH can accept it within two weeks.

§ 3 Prices, Payment & Rights of Retention and Set-Off

(1) All prices are net prices plus VAT.

(2) Unless otherwise agreed, the purchase price must be paid without deduction upon receipt of the goods.

Default interest of 8% above the respective base interest rate p.a. calculated. The assertion of a higher damage caused by default remains reserved.

(3) A right of retention can only be exercised by the customer if his counterclaim is based on the same contractual relationship.

(4) The customer can only set off against claims that have been legally established or are undisputed.

§ 4 Delivery

(1) Delivery is unfree. When delivered with UPS standard within Germany for a freight charge flat rate of €7,- per package. Other shipping methods according to effort. Welte GmbH reserves the right to choose the cheapest shipping method. Welte GmbH will inform the customer about the respective costs before the contract formation.

(2) The goods will be delivered to the delivery address specified by the customer. Information about delivery times are always non-binding, unless a delivery date has been agreed to be binding. Partial deliveries are permitted, provided they are reasonable for the customer.

(3) If there is a delivery delay for which Welte GmbH is responsible, the period of grace to be set by the customer shall be two weeks.

§ 5 Shipping and Transfer of Risk

(1) If the goods are sent to the customer at the request of the customer, then with dispatch to the customer and at the latest when leaving the warehouse the risk of accidental loss or accidental deterioration of the goods goes to the customer. This applies regardless of whether the shipment of the goods from the place of performance takes place or who bears the freight costs.

(2) At the request of the customer we insure the delivery in his name and on his account.

(3) For the sending of objects to us the customer carries the danger, as far as it is not the Return of defective goods is. The transport costs are only for the return of authorized rejected goods.

§ 6 Retention of Title

The delivered goods remain the property of Welte GmbH until full payment of all claims from the delivery contract by the customer.

This also applies to all future deliveries, even if Welte GmbH does not expressly refer to them. Welte GmbH is entitled to take back the goods if the customer behaves contrary to the contract.

The customer is required to handle the product with care. If maintenance and inspection work required the customer has to carry them out regularly at their own expense.

The customer is obligated, as long as the property has not been transferred to him, to treat the purchased goods with care, and must notify Welte GmbH in writing without delay if the delivered goods are seized or subjected to other interventions by third parties. As far as the third party is not able to refund Welte GmbH the judicial and to reimburse extra-judicial costs of a claim in accordance with § 771 ZPO, the customer is liable for Welte GmbH arising failure.

The customer is entitled to resell the reserved goods in the normal course of business. The customer hereby assigns the claim of the customer from the resale of the reserved goods to Welte GmbH in the amount of the respective invoice value including value added tax.

This assignment applies regardless of whether the goods have been resold without or after processing.

Notwithstanding this assignment, the customer remains entitled to collect the claim. The power of Welte GmbH, to collect the claim remains unaffected.

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However, Welte GmbH will not collect the claim as long as the customer meets its payment obligations from the proceeds received, is not in default of payment and, in particular, no application for the opening of insolvency proceedings has been filed or payment has been suspended.

Welte GmbH undertakes to release the securities to which it is entitled upon request of the customer insofar as their value exceeds the claims to be secured by more than 20%.

§ 7 Warranty and Liability

- (1) Claims for defects expire 12 months after delivery to the customer.
- (2) The contractor has a recognizable defect stating the invoice number, product name, the size, batch number, quantity of material and defect description must be reported in writing without delay; otherwise the assertion of the warranty claim is excluded. Same applies if a defect shows up later. The contractor bears the full burden of proof for all eligibility requirements, in particular for the defect itself, for the time of the determination of the defect and for the timeliness of the complaint.
- (2a) If the goods are defective at the time of transfer of risk, Welte GmbH is entitled to choose between replacement or repair. Only after failure of the supplementary performance the customer has the claim for withdrawal from the purchase contract or reduction of the purchase price.
- (3) Warranty rights of the customer presuppose that he owes his account according to § 377 HGB has been duly complied with. Should be complaints despite obviously, according to § 377 HGB, obvious defects are immediate, but no later than within 14 days after receipt of the goods, concealed defects immediately after their discovery asserted otherwise, the goods are considered approved.
- (3a) The scheme does not apply to second-hand goods. Used goods are to the exclusion of any warranty sold.
- (3b) Customary tolerances in terms of size, quantity, weight, quality, color, etc. are not entitled complaints. In principle, only the product description of the manufacturer is agreed as the quality of our goods. Public statements, suggestions or advertising by the manufacturer do not constitute contractual proper specification of the goods.
- (4) For the rest, the statutory warranty provisions shall apply, unless expressly agreed otherwise.
- (5) The Welte GmbH is liable without prejudice to the above provisions and the following limitation of liability for damage to life, limb and health, due to a negligent or intentional breach of duty, our legal representatives or our vicarious agents, as well as for damages, which are covered by the liability according to the product liability law, as well as for all damages, which are based on intentional or grossly negligent breaches of contract as well as malice, our legal representatives or our vicarious agents. Insofar as we have given a quality and / or durability guarantee with regard to the goods or parts thereof, we are also liable under this guarantee. However, we are only liable for damages resulting from lack of guaranteed quality or durability, but not directly on the goods, if the risk of such damage is evidently covered by the guarantee of quality or durability.

Welte GmbH is also liable for damages caused by simple negligence, insofar as these driving permissibility concerns the violation of such contractual obligations, the observance of which is of particular importance for the achievement of the purpose of the contract (cardinal obligations). However, we are only liable if the damage is typically associated with the contract and foreseeable. We are not liable for simple negligent breaches of non-essential secondary obligations. The above limitations of liability also apply, as far as the liability for the legal representatives, senior employees and other vicarious agents is affected.

Further liability without regard to the legal nature of the asserted claim is excluded. Insofar as our liability is excluded or limited, this also applies to the personal liability of our employees, representatives and vicarious agents.

§ 8 Data Protection

The seller is entitled to receive the information relating to or in relation to the business relationship Data about the buyer, whether they come from the seller or from third parties, i.S.d. Federal Data Protection Act.

§ 9 Jurisdiction & Applicable Law

- (1) German law applies excluding the UN sales law.
- (2) The place of performance and exclusive place of jurisdiction for all disputes is the registered office of Welte GmbH.
- (3) Should individual provisions of these terms and conditions be or become ineffective or a gap the remaining provisions shall remain unaffected. The parties undertake to replace the ineffective regulation to make such a legally permissible regulation, the economic purpose of the ineffective regulation comes closest or fill in this gap.