



Conditions of Sale and Delivery of Wacom Europe GmbH

October 2017

Clause 1 Scope of Application of Our Conditions of Sale and Delivery

1. Our Conditions of Sale and Delivery (hereinafter referred to as "Conditions") apply to commercially acting purchasers. The Conditions are applicable exclusively; standard business conditions of the purchaser that conflict with or differ from these Conditions are not accepted by us unless we explicitly approve their validity in writing. Our Conditions are also applicable in the event that we execute the delivery without reservation in the knowledge of conflicting or different standard business conditions of the purchaser.

2. All arrangements concluded between us and the purchaser for the purpose of executing this contract must be made in writing.

3. Our Conditions are also applicable to all future transactions with the purchaser. Concerning future transactions, as far as Wacom communicates the then current Conditions to the purchaser, those Conditions shall apply.

Clause 2 Offers

1. Our offers are not binding. In each case, a conclusive contract is not brought about with legally binding effect – once the purchaser has placed an order – until confirmed in text form by us.

2. Orders are binding offers. We are free to accept such offers within four weeks of their presentation either by issuing an express declaration or by delivering the goods to the purchaser within said period.

3. Written orders reiterating a preceding order made by telephone, but not expressly referring to the preceding order, shall be regarded as an additional order.

Clause 3 Qualities of Product and Guarantees

1. Indications regarding cost estimates, illustrations, drawings and weight, dimensional, performance or other constructional details and/or technical data are binding only if explicitly agreed. If ordered products cannot be delivered, we reserve the right to change and vary the quality of the goods if and to the extent that this will have only an immaterial detrimental effect on the intended use of the goods in question. We shall notify the purchaser of such an inability to deliver without undue delay. The purchaser shall be entitled to rescind the order within four weeks of notification of the change or variation. If the purchaser rescinds the order, relevant payments already made by same shall be refunded without undue delay. The purchaser shall be solely responsible itself for the intended use of the items ordered.

2. Indications regarding the quality of the goods are merely product descriptions unless expressly guaranteed. The clear significance to the purchaser of certain product characteristics does not itself give rise to a guarantee if the purchaser does not request an express guarantee and such a guarantee is not granted.

Clause 4 Prices, Price Adjustment, Conditions of Payment

1. The price stipulated in our offer shall be binding for 30 days from the date of issue of the offer. We reserve the right to increase our prices reasonably if, after conclusion of the contract, manufacturing costs increase by at least 5%, in particular because of collective agreements or price increases for raw materials. Upon request, we shall provide the purchaser with evidence of manufacturing cost increases.

2. Unless otherwise stipulated in our order confirmation, our prices are valid "ex works" Krefeld, Germany – EXW/ex works Krefeld, Germany (Incoterms 2010) -, excluding packaging, loading and freight charges as well as import duties and other similar charges; these charges will be invoiced separately.

3. Unless otherwise stipulated in our order confirmation, the purchase price is payable net (without deduction) within a period of 10 days. This period commences,

- if collection of the goods has been agreed, from the time the goods are made available for collection,
- if shipment of the goods has been agreed, from the time the goods are passed to a carrier,

- in all other cases, from the time the goods are delivered or the purchaser refuses to accept delivery without justification:

In case of partial deliveries, the purchase price shall be due only on a pro rata basis.

4. The statutory value added tax is not included in our prices; it will be shown separately in the invoice at the statutory rate on the date the invoice is issued.

5. The deduction of a cash discount shall be subject to separate written agreement.

Clause 5 Set-off and Right of Retention

1. The purchaser can proceed with set-off only if its counterclaims have been recognised by final and absolute finding of a court or are uncontested or have been recognised by us.

2. The purchaser can exercise a right of retention only in the event that its counterclaim is based on the same contractual relationship. The purchaser is not entitled to exercise a right of retention in the event that the counterclaim is contested.

3. Should we obtain information that the financial or credit situation of the purchaser has materially deteriorated, we shall be entitled to withhold the delivery until the purchaser has paid the consideration in cash or provided security for such payment.

Clause 6 Consequences of Default in Payment

1. Should the purchaser be in default in payment, we are entitled to request default interest at least as provided for by law (currently, from companies, 8% above the base rate). In the event of a greater loss, we must furnish corresponding evidence.

2. If the purchaser has not paid the due purchase price upon expiry of a reasonable grace period, we are entitled to rescind the contract and demand compensation instead of performance.

Clause 7 Place of Performance and Passing of Risk

1. Unless expressly agreed otherwise, the goods have to be collected by the purchaser at our logistic partner at Krefeld, Germany. The risk of accidental loss or accidental deterioration of the goods shall pass to the purchaser as soon as we have informed same that the goods have been picked and are ready for collection.

2. If we take charge of shipping the goods to the purchaser, we shall be obliged only to hand over the goods to a suitable person (e.g. carrier or forwarding agent). Such handover shall constitute performance. The risk passes to the purchaser as soon as we have handed over the goods to the forwarder.

Clause 8 Partial Deliveries

If it proves impossible to execute the entire delivery, we shall be entitled to execute part deliveries and part performance unless the purchaser cannot reasonably be expected to accept such execution. We shall notify the purchaser of such an inability to deliver without undue delay. The purchaser shall be entitled to rescind the order within four weeks of notification of the change or variation of the order. If the purchaser rescinds the order, relevant payments already made by same shall be refunded without undue delay. If the purchaser rescinds the order, we shall be entitled to pro rata payment of the purchase price.

Clause 9 Default in Delivery, Setting a Time Limit with Warning of Refusal

1. Compliance with our delivery commitment is conditional upon the timely and proper fulfilment of the commitments of the purchaser.

2. In case of default in delivery for which we are responsible, compensation for default is excluded in the event of slight or simple negligence ("slight negligence").

3. We are not responsible for delays in delivery attributable to force majeure or similar circumstances that make impossible or materially impede timely delivery (including strikes, lock-out, unforeseeable lack of personnel or lack of means of transportation, default in delivery by suppliers not imputable to us, intervention of governments or public authorities etc.). Such delays entitle us reasonably to postpone the date of delivery. If the reason for the obstacle to delivery has not been removed after six months, each party shall be entitled to rescind the contract wholly or in part. Each party shall be obliged to notify the other party without undue delay of the occurrence of an obstacle to performance and, upon rescission, to refund to the other party without undue delay considerations already paid.

4. If we are already in default and the purchaser has set a reasonable period of grace with a warning of refusal, the purchaser shall be entitled upon fruitless expiry of such period of grace to rescind the contract and claim compensation pursuant to § 12 Compensation and Restrictions of Liability.

Clause 10 Inspection of Defects and Burden of Proof

1. The purchaser must inspect the goods for defects without undue delay upon delivery. Should any defect be detected at such time or later, the purchaser must notify us without undue delay (at the latest within 5 days). The notification must describe the detected defect as precisely as possible. If the purchaser refrains from making the notification, the goods shall be deemed approved in respect of detectable defects (Article 377 HGB – German Commercial Code) unless we deliberately omitted to disclose defects. Notification is also necessary if we have erroneously delivered goods other than those agreed or have delivered an insufficient quantity.

2. If the purchaser asserts the existence of defects and insists upon subsequent performance, and we establish, upon inspection, that no defects exist, the purchaser shall be obliged to bear the costs incurred by the inspection on the basis of our hourly rates applicable at the time of the inspection.

3. If we contest the defectiveness of the goods, it is incumbent upon the purchaser to furnish proof that the defect existed at the time of the passing of risk.

Clause 11 Claims of the Purchaser Based on Defects

1. If the object purchased is defective and we are responsible for such defect, we shall be initially entitled to choose either to remedy the defect or to provide a replacement delivery. The choice is to be made according to our reasonably exercised discretion by taking into consideration the interests of both parties.

2. If we are unwilling or unable to remedy the defect or provide a replacement delivery, in particular if the absence of such a resolution persists beyond a reasonable period for reasons for which we are responsible, or if the remedy or replacement delivery otherwise proves unsuccessful more than twice, the purchaser shall be entitled, at its choice, either to rescind the contract or to demand an appropriate reduction of the purchase price.

3. The following provisions apply to claims for compensation.

Clause 12 Compensation and Restrictions of Liability

1. Compensation claims are excluded in case of only slightly negligent failure on our part to comply with duties, unless a contractually essential duty was violated. A contractually essential duty is such which makes the proper execution of the contract only possible and which the contractual partner relied on and could duly rely on. If we slightly negligently fail to comply with a contractually essential duty, our liability is limited to foreseeable and contractually typical damages and to the sum insured by our product liability insurance (US \$ 2,000,000.00), provided that this sum exceeds the typically foreseeable damage. We are willing to allow the purchaser to inspect our insurance policy.

2. The forenamed restrictions of liability also apply in favour of our employees and representatives.

3. A restriction of liability does not exist in case of losses arising from death, personal injury, or an impairment to health due to negligent or intentional failure to comply with duties; in case of other losses due to intentional or grossly negligent failure to comply with duties; in case of claims pursuant to the Product Liability Act (*Produkthaftungsgesetz*); in case of intentionally concealed defects of goods; or if we have granted an express guarantee for the quality of the goods or assumed the risk of procurement. In case of a guarantee, however, the liability is restricted to a maximum amount of € 100,000.00.

Clause 13 Statute of Limitations

Claims of the purchaser shall fall under the statute of limitations upon expiry of 12 months from dispatch of the goods. To the extent that the law provides limitation periods of three years or more, the limitation period is increased to three years from the date of dispatch. Legal provisions on longer limitation periods for compensation claims due to intentional failure to comply with duties or arising from Articles 479 or 478 German Civil Code (*BGB*) shall remain entirely valid. The statute of limitations according to Article 12 German Product Liability Act (*Produkthaftungsgesetz*) shall also remain unaffected.

Clause 14 Retention of Title

1. The goods remain our property until receipt of all payments resulting from the business relations with the purchaser.

2. In case of a breach of contract by the purchaser, in particular in case of default in payment, we shall be entitled to take back the goods. Taking back the delivered goods does not constitute rescission of the contract unless expressly declared by us in writing. After taking back the goods, we shall be entitled to sell same. The proceeds of the sale – less reasonable selling costs – shall be deducted from the purchaser's payables.

3. In case of seizure of property or any other intervention by third parties, the purchaser must notify us in writing without undue delay.

4. The purchaser is entitled to resell the goods in the ordinary course of business, but it shall now assign to us all receivables from its customers or third parties accruing to same from the resale in the amount of the final invoice amount (including value added tax), irrespective of whether or not the goods are resold without or after processing. The purchaser shall remain entitled to collect said receivables even after the assignment. Our right to collect the receivables ourselves remains unaffected. We undertake not to collect the receivables, however, provided that the purchaser fulfils its payment obligations from the proceeds received by same, is not in default in payment and, in particular, that no application for the initiation of insolvency proceedings has been filed and payments have not been suspended. If one of these cases applies, however, we can demand that the purchaser disclose the assigned receivables and identify the relevant debtors, provide all the information required to collect the receivables, surrender the associated documentation, and notify the debtors (third parties) of the assignment.

5. Any processing or transformation of the goods by the purchaser shall be performed for us in each case. If the goods are processed with other objects not owned by us, we shall procure co-ownership of the new thing pro rata the value of the goods to the value of the other processed objects at the time of processing. In this case, the inchoate title (*Anwartschaftsrecht*) of the purchaser to the purchased object extends to the transformed object. The thing created by processing shall be governed by the same provisions as the goods delivered subject to retention.

6. We undertake at the request of the purchaser to release the security to which we are entitled to the extent that the value of our security exceeds the secured receivables by more than 20%. The choice of security to be released is within our discretion.

Clause 15 Jurisdiction

If the purchaser is a businessman (*Kaufmann*), our place of business is the place of jurisdiction. We are also entitled to sue the purchaser at its place of business.

Clause 16 Final Provisions

1. If any provision of these Conditions is or becomes invalid wholly or in part, the other provisions shall not be affected.

2. This contract is governed by German law, ousting the Convention on Contracts for the International Sale of Goods (UN Sales Convention).