

Würth Australia Terms and Conditions Effective 1 November 2023 – Key Changes from Terms and Conditions Effective September 2021

Clause n.	Effective 1 September 2021	Effective 1 November 2023	Summary
2.7	<p>The Supplier may vary these Terms by written notice to the Customer at any time. Any variations will apply to orders placed after the date of notification of the variation (and not to any orders placed before that time).</p>	<p>The Supplier may vary these Terms by written notice to the Customer at any time. Any variations will apply to Orders accepted and/or confirmed by the Supplier after the date of notification of the variation (and not to any Orders accepted and/or confirmed by the Supplier before that time). The Customer has the discretion not to place any further Orders if it does not accept the varied Terms.</p>	<p>The Customer is able to not place further orders if it does not accept the varied Terms and Conditions.</p>
3.2	<p>If the Customer requests any variation to an order that has already been accepted by the Supplier, including but not limited to changes in the method of packaging or delivery, the Supplier may increase the price to account for the cost of the variation.</p>	<p>If the Customer requests any variation to an Order that has already been accepted by the Supplier, including but not limited to changes in the method of packaging or delivery, the Supplier may increase the price to reflect the additional costs incurred by the Supplier in respect of the variation. The Customer may cancel the Order if it does not agree to pay the increased price, unless if to do so will result in Loss to the Supplier (for example, if work has been carried out already to fulfil the Order by the Supplier). The Supplier will use its best</p>	<p>Würth Australia will recover the direct costs resulting from the variation to an order. The Customer may cancel the order if it does not wish to proceed based on the revised pricing, except where cancellation would result in loss to Würth Australia.</p>

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		endeavours to mitigate its Loss in respect of such cancelled Order.	
3.3	The Supplier may vary the price of any Goods and/or Services ordered by the Customer, by notice in writing to the Customer. The Customer may cancel the relevant order without liability by written notice to the Supplier if it does not wish to proceed with the order on the basis of the varied price.	N/A	Removed.
4.2	The Customer must pay for all costs and expenses associated with delivery (or collection, if applicable), including all applicable packaging or required crating, freight, insurance and other charges arising from the point of despatch of the Goods to the Customer's premises. The Customer will be notified in advance of such costs and expenses.	The Customer must pay for all costs and expenses associated with delivery (or collection, if applicable), including all applicable packaging or required crating, freight, insurance and other charges arising from the point of despatch of the Goods to the Customer's premises. The Customer will be notified in advance of such costs and expenses. The Customer may cancel the Order if it does not wish to proceed with the Order based on the notified costs and expenses.	The Customer may cancel the order if they do not agree to pay the shipping costs and expenses.

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4.5	If delivery is attempted and is unable to be completed due to a fault of the Customer, the Customer will be liable for any additional delivery charges as well as reasonable storage charges payable monthly on demand.	If delivery is attempted and is unable to be completed due to a fault of the Customer, the Customer will be liable for any additional delivery charges incurred by the Supplier as a consequence of the failed delivery attempt , as well as any storage costs incurred by the Supplier as a consequence of the failed delivery attempt , payable monthly on demand.	The additional delivery charges are those delivery charges actually incurred by Wurth as a consequence of the Customer's fault.
4.6	If agreed that the Customer will collect the Goods: (a) the Customer must collect the Goods within 7 days of being advised the Goods are ready for collection; and (b) if the Customer does not collect the Goods in accordance with clause 4.6(a), the Customer will be liable for any additional delivery charges as well as reasonable storage charges payable monthly on demand.	If agreed that the Customer will collect the Goods: (a) the Customer must collect the Goods within 7 days of being advised the Goods are ready for collection; and (b) if the Customer does not collect the Goods in accordance with clause 4.6(a), the Customer will be liable for any additional delivery charges as well as storage costs incurred by the Supplier as a consequence of the failure by	The additional delivery charges are those delivery charges actually incurred by Wurth Australia as a consequence of the Customer's fault.

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		<p>the Customer to collect the Goods, payable monthly on demand.</p>	
4.8	<p>Except where the Supplier's obligation is a Consumer Guarantee, the Supplier is not liable for any Loss whatever due to a failure by the Supplier to deliver the Goods or supply the Services (or any of them) promptly or at all.</p>	<p>The Customer acknowledges that the Supplier uses third party freight companies to deliver Goods, and that such companies may not guarantee a particular delivery date or time. Except where clause 13.2 applies, the Supplier is not liable for any Loss whatever due to a failure by the Supplier to deliver the Goods or supply the Services (or any of them) promptly or at all, other than to refund the price paid by the Customer where the Goods or Services are not supplied or delivered at all.</p>	<p>Other than where clause 13.8 applies, if goods are not delivered or services not supplied promptly or at all, Würth Australia will not be liable to the Customer other than to refund the price of the goods or services.</p>
5.2	<p>The Customer must provide notice to the Supplier of any Defective Goods or Defective Services within 14 days after delivery or supply of the Goods or Services.</p>	<p>Subject to any rights the Customer may have under the ACL as outlined in clause 13.2, the Customer must provide notice to the Supplier of any Defective Goods or Defective Services within 14 days after delivery or supply of the Goods or Services.</p>	<p>In addition to the rights a Customer may have under the Australian Consumer Law, the Customer must provide notice of defective goods and services within 14 days of delivery or supply.</p>

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6.1	Only those Customers with a credit account approved by the Supplier will be entitled to receive the Goods or Services prior to payment. Otherwise, the Supplier will require payment in full on or prior to delivery of the Goods or provision of the Services.	Only those Customers with a credit account approved by the Supplier will be entitled to receive the Goods or Services prior to payment. Otherwise, the Supplier will require payment of all undisputed amounts in full on or prior to delivery of the Goods or provision of the Services.	Customers who do not have a credit account will be required to pay all undisputed amounts in full on or prior to delivery of the Goods or provision of the Services.
6.4	New clause	The time for payment is of the essence.	The Customer is obliged to pay on time in accordance with the payment terms.
6.10 (previously 6.9)	The Supplier has the discretion to vary the Customer's credit limit: (a) upon providing reasonable notice to the Customer; or (b) if clause 6.8 applies, without providing reasonable notice to the Customer.	The Supplier may vary the Customer's credit limit by providing written notice to the Customer. Except where clause 6.9 applies, reasonable notice will be provided to the Customer and the variation will only apply to Orders placed after the notice is given to the Customer (and not any existing Orders already being processed).	Except where the Customer exceeds its credit limit, Wurth Australia may vary the credit limit on reasonable notice and in relation to orders placed after the notice is provided.

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6.11	New clause	If the Customer disputes any amount payable under this clause 6, the Customer must pay the undisputed amount to the Supplier in accordance with these Terms, and the parties must deal with the disputed amount in accordance with clause 18.	Disputed amounts will be dealt with in accordance with the disputes resolution clause 18.
7.2	New clause	<p>The Customer may terminate any Order that it has placed that has been accepted by the Supplier, by written notice to the Supplier, if the Supplier:</p> <ul style="list-style-type: none"> (a) breaches these Terms and, in the reasonable opinion of the Customer, the breach cannot be remedied; or (b) breaches these Terms and, in the reasonable opinion of the Customer, the breach can be remedied but is not remedied by the Supplier within 7 days after the Customer gives the Supplier notice of the breach; or (c) suffers an Insolvency Event. 	The Customer may terminate an order on specified grounds.
7.3 (previously 7.2)	The Customer must, within 7 days after the date of expiry or termination:	Within 7 days after the date of expiry or termination:	Within 7 days after the expiry or termination, Würth Australia will either deliver any goods or services or issue a refund where they have been paid for, the

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	(a) pay the Supplier all amounts it owes the Supplier, whether due at that time or not; and (b) return all Confidential Information to the Supplier.	(a) the Supplier must deliver to the Customer any Goods and/or Services that the Customer has paid for but not yet received (or refund the Customer any amounts that the Customer has paid for such Goods and/or Services); (b) the Customer must pay the Supplier all amounts it owes the Supplier, whether due at that time or not, in respect of Goods and/or Services supplied as at the date of termination; and (c) each party must return to the other any Confidential Information that it holds in respect of the other.	Customer must pay all amounts owing and each party must return the confidential information to each other.
7.4 (previously 7.3)	In addition to the above, if the Supplier fails to pay any amount owing under these Terms by the due date: (a) The Supplier may charge the Customer interest calculated on the portion of the Customer's account overdue at the rate of 4.5% per month from the date on which the payment default arose until the date of payment in full; and (b) The Customer must indemnify the Supplier from, all losses, damages, claims, demands, costs and expenses (including without limitation all	In addition to the above, if the Customer fails to pay any amount owing under these Terms by the due date (other than an amount the subject of a dispute under clause 6.11): (a) the Supplier may charge the Customer interest calculated on all overdue and undisputed amounts calculated with reference to the Reserve Bank of Australia's official cash rate + 4% per month from the date on which the payment default arose until the date of payment in full; and	If the Customer fails to pay any undisputed amount, the Supplier may charge the Customer interest on overdue and undisputed amounts calculated using the Reserve Bank of Australia's official cash rate + 4% per month from the date on which the payment default arose until the date of payment in full. The indemnity in favour of Würth Australia will not apply to any relevant loss caused by Würth Australia.

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	<p>legal costs, collection agency costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Terms or to recover any Goods.</p>	<p>(b) the Customer must indemnify the Supplier from, all losses, damages, claims, demands, costs and expenses (including without limitation all reasonable legal costs, collection agency costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Terms or to recover any Goods, except to the extent such loss, damage, claim, demand, cost or expense is caused by the Supplier.</p>	
8.	<p>The Customer indemnifies the Supplier against any Loss which the Supplier suffers, incurs or is liable for in connection with these Terms and any order including, but not limited to:</p> <ul style="list-style-type: none"> (a) any act or omission of the Customer; (b) any breach of these terms by the Customer; and (c) enforcing any security interest arising in connection with these Terms or any order. 	<p>Except to the extent caused or contributed to by the Supplier, the Customer indemnifies the Supplier against any Loss which the Supplier suffers, incurs or is liable for in connection with these Terms and any Order including, but not limited to:</p> <ul style="list-style-type: none"> (a) any act or omission of the Customer; (b) any breach of these terms by the Customer; and (c) enforcing any security interest arising in connection with these Terms or any Order. 	<p>The Customer's liability under the indemnity is reduced to the extent that Wurth Australia caused the relevant loss.</p>

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10.3	<p>Subject to clause 13.2, the Customer assumes all risk and liability for loss, damage or injury to persons or to property of the Customer, or third parties, arising out of the use or possession of any of the Goods once in the possession of the Customer.</p>	<p>Subject to clause 13.2, the Customer assumes all risk and liability for loss, damage or injury to persons or to property of the Customer, or third parties, arising out of the misuse of any of the Goods, a failure by the Customer to use the Goods for their intended and/or specified purposes, or a failure by the Customer to use the Goods in accordance with any instructions and/or recommendations provided with the Goods.</p>	<p>The Customer is liable for risk and loss, damage or injury to individuals or to property of the Customer, or third parties, in the following circumstances:</p> <ul style="list-style-type: none"> - the misuse of any of the Goods, - failure to use the Goods for their intended and/or specified purposes, - failure by the Customer to use the Goods in accordance with any instructions and/or recommendations
11.1(d)	<p>Until the Supplier receives full payment in cleared funds for all Goods and Services supplied by it to the Customer, as well as all other amounts owing to the Supplier by the Customer: ...</p> <p>(d) in addition to its rights under the PPSA, the Supplier may without notice, enter any premises where it suspects the Goods are and remove them, notwithstanding that they may have been attached to other goods not the property of the Supplier, and for this purpose the Customer irrevocably licences the Supplier to enter such premises and also indemnifies the Supplier from and against all costs,</p>	<p>Until the Supplier receives full payment in cleared funds for all Goods and Services supplied by it to the Customer, as well as all other amounts owing to the Supplier by the Customer: ...</p> <p>(d) in addition to its rights under the PPSA, the Supplier may, by providing reasonable prior written notice, enter any premises where the Goods are located and remove them, and for this purpose the Customer irrevocably licences the Supplier to enter such premises and indemnifies the Supplier for any loss or damage it suffers or incurs in connection with</p>	<p>Where Würth Australia enters premises on reasonable prior written notice to recover goods, the Customer is not liable for any loss or damage caused by Würth Australia.</p>

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	claims, demands or actions by any party arising from such action (except in the case of the Suppliers unlawful act or omission or negligence).	such action (except to the extent caused or contributed to by the Supplier).	
13.1	<p>Subject to clause 13.2:</p> <p>(a) all conditions, warranties and implied terms, whether statutory or otherwise, are excluded in relation to the Goods and Services; and</p> <p>(b) the Customer releases the Supplier from any liability for legal costs and disbursements and, without limitation, any indirect or consequential expense, loss or damage, loss of profits, revenue, use, expectation or opportunity, wasted expenditure, lost production or similar losses suffered by the Customer under or in connection with these Terms;</p> <p>(c) the Supplier's liability for any Loss suffered or incurred by the Customer, howsoever caused, which arises out of or in connection with the supply of the Goods or Services under these Terms:</p> <p>(i) in the case of goods, is limited to (at the option of Supplier):</p>	<p>Subject to clause 13.2:</p> <p>(a) all conditions, warranties and implied terms, whether statutory or otherwise, are excluded in relation to the Goods and Services; and</p> <p>(b) each party releases the other party from any indirect or consequential expense, loss or damage, loss of profits, revenue, use, expectation or opportunity, wasted expenditure, lost production or similar losses suffered by that party under or in connection with these Terms;</p> <p>(c) each party's liability for any Loss arising under these Terms is limited to the total value of the Goods and Services supplied under these Terms.</p>	Neither the Customer or Würth Australia is liable to the other for consequential loss and each party's loss is limited to the total value of the goods or services supplied.

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	<p>(A) the replacement of the goods or the supply of equivalent goods;</p> <p>(B) the repair of the goods;</p> <p>(C) the payment of the cost of replacing the goods or of acquiring equivalent goods; or</p> <p>(D) the payment of the cost of having the goods repaired; or</p> <p>(E) a credit note in the amount of the price paid for the goods;</p> <p>(ii) in the case of services, is limited to (as the option of the Supplier):</p> <p>(A) the resupply of the services; or</p> <p>(B) the payment of the cost of resupply of the services; and</p> <p>(C) a credit note in the amount of the price paid for the services.</p>		
18.	New clause	<p>18.1 Except for interim or urgent interlocutory relief which may be sought at any time, before court or arbitration proceedings are commenced, the parties must endeavour to settle any dispute that arises out of or in connection with these Terms in accordance with this clause 18.</p>	<p>A disputes resolution process will be used by the parties to resolves all disputes except those that are seeking interlocutory or injunctive relief.</p>

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		<p>18.2 A party claiming that a dispute has arisen must give notice in writing to the other party setting out the nature of the dispute (Notice).</p> <p>18.3 Within 7 days after receipt of a Notice (or such other period agreed by the parties), the dispute must be referred to the senior representatives nominated by each of the parties, who must meet and use their reasonable endeavours to resolve the dispute.</p> <p>18.4 If the dispute is not resolved within 14 days after receipt of the Notice (or such other period agreed by the parties), the parties must refer the dispute to the Victorian Bar Expedited Mediation Scheme, before a mediator appointed by the President of the Victorian Bar.</p> <p>18.5 Pending resolution of any dispute, the parties must continue to perform their obligations under these Terms without prejudice to their respective rights and remedies (except where</p>	

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		<p>such obligations are the subject of the dispute).</p> <p>18.6 If the dispute is not resolved by the mediation within 14 days after receipt of the Notice, either party may commence court or arbitration proceedings as the case may be.</p>	
21 (previously 20)	<p>In this clause 20, Confidential Information means confidential information, trade secrets, know-how, scientific, technical, product, market or pricing information relating to the Goods or Services or the Supplier's business. The Customer is authorised to use the Confidential Information for the sole purpose of using or selling the goods or services supplied under these Terms and must not otherwise use or disclose any Confidential Information.</p>	<p>20.1 Other than as set out in this clause 21, neither party may disclose to any person the Confidential Information.</p> <p>20.2 A party (Disclosing Party) may disclose the Confidential Information of the other party:</p> <p>(a) where such disclosure is required to enable the Disclosing Party to exercise its rights or perform its obligations under these Terms;</p> <p>(b) to those of its representatives, personnel or advisors who need to know the Confidential Information for the purposes of performing under these Terms; or</p> <p>(c) which is required to be disclosed by law.</p>	<p>Obligations in relation to confidential information are mutual and apply to both Würth Australia and the Customer. Note also expanded definition of 'Confidential Information' as clause 1.1.</p>

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22 (previously 21)	No amount owing, whether present or future, actual, contingent or prospective and on any account whatsoever, by the Customer to the Supplier may be offset against any amount owing whether present, future, actual, contingent or prospective to the Customer from the Supplier hereunder or on any other account whatsoever.	<p>22.1 The Supplier may set off from any amounts it owes to the Customer any proven and undisputed amounts the Customer owes to the Supplier under or in connection with these Terms.</p> <p>22.2 The Customer must not set off from any amounts it owes to the Supplier under or in connection with these Terms.</p>	Only proven and undisputed amounts can be offset by Würth Australia.