



## **Terms and Conditions of Delivery**

### I. General Information/Scope of Application

All offers submitted to WIAG Antriebstechnik GmbH (hereinafter the Contractor) and also all instructions and orders placed by the Customer are effected exclusively on the basis of these General Terms and Conditions of Business. Any conflicting business conditions or any deviating from those of the Contractor shall be inapplicable even if they have not been expressly contradicted in each specific case. Any provisions differing from these delivery terms and conditions of the Contractor shall only then be effective if a prior written agreement has been made by the contractual partners.

### II. Submitting of Offers and Orders

1.  
Offers made by the Customer are binding and free of charge for the Contractor as is the setting up of sketches, plans and the like, documents which are drafted by the Customer.
2.  
The Customer submitting an offer is bound to his quotation for a period of three weeks. The commitment period commences after the Contractor has taken receipt of the offer.
3.  
Offers submitted by the Contractor are always non-binding. Orders become binding only after written confirmation has been given for such orders by the Contractor. The Contractor retains the absolute ownership and copyright of cost estimates, drafts, sketches, calculations etc.; these may not be used, nor duplicated nor made accessible to third parties without the consent of the Contractor. They are to be returned immediately to the Contractor if so required and also returned in the event that no order is placed with the Contractor. Technical details and dimension specifications provided by the Contractor, also those in the sketches, are non-binding. They constitute no guaranteed quality features but are to be seen as descriptions or classification regarding delivery or service. The Customer is obliged to examine and check all details shown in the technical drawings. The Contractor reserves the right to the making of minimal changes to size and design or to implementing model changes. Similarly the Contractor has the right to carry out improvements and to use substitute materials.

### III. Prices and Terms of Payment

1.  
The agreed prices are in euros ex works Lippstadt-Benninghausen. As a basic principle these prices exclude packaging, insurance, freight, customs duties and all other costs. They also exclude the relevant legally stipulated value-added tax, which is also to be charged. All fluctuations in rates of exchange are risks to be borne by the Customer.

The statutory value-added tax applicable is shown in offers and on invoices as a separate sum.



2.

The Customer is only then entitled to a form of offsetting if his counterclaims can be legally ascertained, if they are beyond dispute or if they are accepted by the Contractor. The Customer is only authorised to exercise the right of retention insofar as a claim pertains to the same contractual relationship.

3.

Payment of the purchasing price can only be effected by using the bank account stated overleaf. Discount deductions are only permissible following a written agreement in special cases.

4.

Provided that no other arrangement has been made, the purchasing price is to be paid within 10 days following delivery of goods. Interest on arrears is calculated at 8 percentage points above the relevant base interest rate per annum. We reserve the right to claim higher damages as a result of default in payment.

5.

Insofar as no fixed price agreement has been made, we reserve the right to make reasonable price changes to deliveries that are carried out three months or longer after the concluding of the contract. Such changes could result from alterations in labour costs, material costs or distribution expenses.

#### IV. Delivery and Delivery Periods

1.

Commencement of the delivery time stated by the Contractor presupposes punctual and proper fulfilling of Customer obligations. We reserve the right to object to unfulfilled contracts.

2.

Should a Customer be in default of acceptance or if he culpably violates any other obligation to co-operate, then the Contractor is entitled to demand compensation for any losses suffered by the said Contractor and for all manner of additional expenses incurred. We also reserve the right to make further claims. If such aforesaid conditions prevail, the risk of accidental loss or of accidental deterioration of the delivery items will pass to the Customer at that time when he defaults on acceptance or on payment.

3.

In the event of a delay in delivery, all other legal claims and rights of the Contractor shall remain unaffected.

4.

If the Customer requests the goods to be sent to him, then at the time of dispatch to the Customer, at the very latest when the goods leave the factory/warehouse, the risk of accidental loss or of accidental deterioration of the purchased item passes to the Customer. This applies irrespective of whether or not goods are sent from the place of performance or irrespective of which party bears the freight costs.



5.

The Contractor reserves proprietary rights and copyrights regarding all documents, such as calculations, sketches, patterns etc., that have been submitted to the Customer in connection with the placing of an order. Such documentation may not be made accessible to third parties unless the Contractor grants the Customer express consent in writing that he may do so. Insofar as the Contractor does not accept an offer made by the Customer within the deadline stated in Section II, the aforementioned documents are to be returned to the Contractor without delay.

6.

Should the Contractor fail to deliver goods within the agreed time, the Customer shall be obliged to grant the Contractor a reasonable extension to the delivery period. The Customer cannot reject partial deliveries as long as the parts delivered are appropriate and useful for the Customer.

Delivery periods are to be reasonably extended if the Customer requests any amendment to technical specifications, if there is a situation of force majeure or if unexpected obstacles occur beyond the control and wishes of the Contractor and his/her representatives. This applies irrespective of whether these occurrences take place in the plant of the Contractor or at the premises of his/her suppliers (e.g. industrial breakdowns, strikes, lockouts, rejects and delay in the supplying of essential purchased parts and raw materials). Insofar as such occurrences considerably change the commercial significance or the capacity of the service performed or they exert great influence on the business of the Contractor and also subsequently make the execution of the required action impossible, then the contract will be appropriately adjusted. As far as this is commercially no longer viable, the Contractor - free and excluded from any claims for damages on the part of the Customer - is entitled to withdraw fully or partially from the contract.

Delivery time has been observed if, by the end of the delivery period, the goods to be delivered have left the factory or their immediate dispatch has been announced.

## V. Retention of Title

1.

The Contractor reserves the right to ownership of the delivered goods up until complete settlement of all bills outstanding which result from delivery of goods and services from the entire business relationship, including ancillary claims and claims for damages. This also applies to all future deliveries of goods and services, even if the Contractor does not always expressly mention this condition. The Contractor is entitled to take back the goods if the Customer acts in a way contrary to his contractual obligations.

2.

As long as ownership has not passed to him/her, the Customer is obligated to handle and look after the delivered item in a careful manner. In particular, he/she is obliged at his own expense to insure the goods adequately and at their full value against theft, fire and water damage. The Customer stores and keeps safe the reserved goods for the Contractor free of charge. The Customer hereby assigns to the Contractor his/her claims for compensation against insurance



companies or other liable third parties resulting from the above-mentioned damages to the amount of the invoice value.

As long as ownership has not passed to him/her, the Customer is obligated to inform the Contractor in writing and without delay if the item delivered is seized or subjected to any other third party intervention. Insofar as the third party is not in the position of reimbursing the Contractor for any judicial and extra-judicial costs incurred by a lawsuit in accordance with Section 771 of the ZPO, the German Code of Civil Procedure, the Customer shall be liable for any losses resulting for the Contractor.

3.

The Customer shall be entitled to resell the reserved goods in the normal course of business. The Customer shall however already assign to the Contractor the receivables from the purchaser resulting from the sale of the reserved goods to the amount of the final invoice sum agreed with the Contractor (including the statutory value-added tax applicable). This assignment applies irrespective of whether the delivered goods have been resold with or without further processing. The Customer shall remain authorised to collect payment, also after assignment has taken place. Authorisation of the Contractor to collect the receivables himself/herself shall remain unaffected. The Contractor will nevertheless not collect the debt as long as the Customer meets his/her payment obligations from the proceeds received, if he is not in default of payment and, more especially, as long as no petition has been filed to open insolvency proceedings or payments have not been suspended.

4.

Processing, finishing or restructuring of the purchased item by the Customer is always carried out in the name of and on behalf of the Contractor.

In such a case the Customer's expectant right to the delivered goods with the restructured element continues. If the goods are processed in conjunction with other items not belonging to the Contractor, then the Contractor acquires co-ownership of the new item in proportion of the objective value of the goods delivered by the Contractor to the other finished items involved at the time of the finishing process. The same applies in the case of any blending or mixing of goods. If blending is performed in such a way as to show the item of the Customer as the main one, it shall be agreed that the Customer transfers co-ownership to the Contractor proportionately and holds in safekeeping the thus resulting sole ownership or co-ownership for the Contractor. In order to secure the claims of the Contractor against the Customer, the Customer also assigns such claims to the Contractor, claims accruing to him through the combination of goods subject to retention with real estate against a third party. The Contractor hereby already accepts this assignment.

5.

Should the Customer so wish, the Contractor undertakes to release the securities to which he/she is entitled if their value exceeds the claims to be secured by more than 20%.

## VI. Warranties and Complaints

1.



The Customer's warranty rights require that he/she shall fulfil the obligations pursuant to Section 377 of the HGB (German Commercial Code), in which is stated that he inspects the product in the due and proper manner, informing the supplier of any defects. Subsequent processing and installation of delivered goods always constitute a waiver of the right to complain about defects, i.e. if any defect was at all apparent.

a)

Notice of obvious defects is to be furnished by the Customer in writing and without delay, but no later than 4 working days following delivery of the goods. Defects which are not immediately apparent shall also be reported to the Contractor in writing and without delay following their discovery, but no later than 4 working days after they have been ascertained. Moreover, conditions and consequences of a delay in notification of defects comply with legal stipulations (Section 377 of the HGB - German Commercial Code or Sections 377, 381 of the HGB - German Commercial Code).

b)

The aforesaid provision in Clause VI 1.a) has no validity if the Contractor has provided a contractual warranty for freedom from defects with regard to the defect in question or if a claim for damages brought about by a violation of life, limb, health or freedom of a person is lodged against the Contractor. In such cases, conditions and consequences of a delay in notification of defects shall comply exclusively with legal stipulations (Section 377 of the HGB - German Commercial Code or Sections 377, 381 of the HGB - German Commercial Code).

c)

If, in the course of a mutual commercial transaction, the Customer fails to submit notification of a defect within the statutory time limit laid down by Section 377 of the HGB (German Commercial Code) or Sections 377, 381 of the HGB (German Commercial Code), this will also lead to the exclusion of the Customer's tort claim arising from the defect or of any such claim which has already resulted from the defect. This does not apply if such claims are based on the Contractor's at least gross negligence or on that of the Contractor's vicarious agents. At the same time, this exclusion is also not applicable for claims which are based on the German Product Liability Act or for those brought about by injury to life, limb, health or freedom of a person.

2.

Claims for defects lapse 12 months from the time the goods supplied by the Contractor were delivered to the Customer. The aforesaid regulations do not apply in cases where longer periods are prescribed by law in accordance with Section 438, (1) point 2 of the BGB, - German Civil Code, (Buildings and Construction Materials), Section 479 (1) of the BGB - German Civil Code (Right of Recourse) and Section 634a (1) of the BGB - German Civil Code (Construction Defects). Prior to any returning of goods, it is imperative to obtain the Contractor's agreement.

3.

If, despite all due care taken, the delivered goods exhibit a defect that was already present at the time of transfer of risk, the Contractor shall be allowed to choose either to repair the goods or to replace them, provided that the notice of defects was given in the required period of



time. The Contractor shall always be given the opportunity to render subsequent performance within a reasonable amount of time. The Contractor shall be entitled to refuse such rendering of subsequent performance if this entails the incurring of disproportionate costs.

4.

If attempts at rectifying the defect fail, the Customer - without prejudice to any possible claims for damages - can withdraw from his contractual obligations or alternatively pay a reduced amount for the goods.

5.

The following do not constitute reasons for the lodging of complaints, i.e. they do not warrant claims for defects: a slight variance in the agreed nature of the product, a slight impairment of the product's serviceability, natural deterioration, normal wear and tear and also damage occurring after the passing of risks as a result of faulty or negligent handling, of excessive strain on the product, of unsuitable operating equipment, of inadequate setting up, of an unsuitable installation base or as a result of special external influences which have not been provided for in the contract. Likewise, if any maintenance work or modifications are incorrectly undertaken by the Customer or by third parties, such alterations and their consequences are not regarded as defects and do not warrant complaints and claims for defects.

6.

Claims made by the Customer for expenses relating to subsequent performance, especially transport, routing, labour and material costs, are excluded insofar as these expenses increase because the goods delivered by the Contractor have been taken, at a later date, to a location other than the Customer's place of business. This exclusion is valid unless such transport is consistent with the goods' intended use.

7.

Damages for defects caused by substandard quality delivered by the Contractor shall be paid by the Contractor within the context of contractual liability laid down by law only in the following cases:

- The claim for damages against the Contractor is based on a quality defect and involves the replacement of material damage caused to goods/interests other than the items purchased. Other pecuniary losses, which result from material damage caused by a quality defect or from damage to goods/interests other than the items purchased (consequential damages of material damage) are also treated the same as material damage. The degree of the Contractor's liability is restricted in accordance with the provision in Clause VI. point 9.
- Responsibility for material defects as a result of intent, malice or gross negligence shall be borne by the Contractor.
- The Contractor has given a special contractual assurance going beyond a quality agreement or has provided a guarantee, confirming goods to be free of any defects causing damage.
- A claim for damages lodged against the Contractor is based on a violation of life, limb, health or freedom of a person.



- The Contractor's non-contractual liability, especially in accordance with regulations relating to unauthorised actions and pursuant to those of the Product Liability Act, shall not be restricted by the aforesaid provisions.

8.

If, as part of the warranty, deliveries are replaced or rectified by the Contractor, the limitation period for warranty claims is not extended, nor is there any such extension relating to the improved parts or to those parts subsequently delivered. Legal regulations appertaining to the suspension and recommencement of the limitation period shall remain unaffected by this.

9.

In the event of consequential damages resulting from quality defects, the Contractor's liability - regardless of the legal grounds - is limited to the maximum amount of 2 million euros for every violation, provided that the Contractor can prove the existence of a valid liability insurance required to pay out on the merits of a claim; the aforementioned insurance is to have a sum insured to the amount of at least 2 million euros for the claim. The same applies to the Contractor's liability for damages resulting from a culpable breach of collateral duty. If, within the framework of a sales contract or any other form of business, several examples of defects arise, each one having the same cause, e.g. the supplying of several items with the same defect within one purchase agreement, then this shall be regarded as one uniform violation. A higher insurance sum can be taken out if so requested in writing by the Customer and then at this person's costs. In such a case, the maximum liability limit rises accordingly.

This liability restriction does not apply if the Contractor's liability is caused by intent or malice or gross negligence. Moreover, it is also not applicable for claims appertaining to the Product Liability Act, for contractual claims relating to defects for which the Contractor has contractually provided a guarantee assuring their absence or for claims for damages lodged against the Contractor - claims which are brought about by injury to life, limb, health or freedom of a person. In this respect, the Contractor assumes liability in accordance with the amount stipulated by law absolutely.

10.

Obligations of warranty and liability on the part of the Contractor - regardless of their legal grounds - are excluded for defects which are caused by faults and flaws in plans, sketches, materials or products supplied by the Customer unless the errors and inadequacies of these plans, sketches, materials or products supplied by the Customer were not detected by the Contractor as a result of gross negligence or fraudulent intent.

If a first-sample test was performed by the Customer without any defects being reported to the Contractor immediately, then the Contractor's liability - regardless of the legal grounds - is excluded for such defects which could have been determined if meticulous first-sample testing had been carried out. These liability restrictions do not apply if the Contractor's liability is caused by intent or malice or gross negligence. Moreover, it is also not applicable for claims appertaining to the Product Liability Act, for contractual claims relating to defects for which the Contractor has provided a guarantee assuring their absence or for claims for damages lodged against the Contractor - claims which are brought about by injury to life, limb, health or freedom. In this respect statutory provisions prevail.



11.

The aforementioned regulations in Clause VI. (1) to (10) do not apply as regards the Customer having recourse against the Contractor in accordance with Sections 478, 479 of the BGB (German Civil Code) or in accordance with Sections 651, 478, 479 of the BGB (German Civil Code) (Regress on account of a defective product reaching a consumer). In this respect statutory provisions prevail.

## VII. Miscellaneous

1.

The place of performance for all rights and duties arising from the business transactions is the business headquarters of the Contractor in Lippstadt/Germany.

2.

The sole court of jurisdiction for all disputes arising from this agreement - irrespective of their legal grounds - is the Contractor's head office in Lippstadt/Germany. However, for legal actions against the Customer, the Contractor is entitled to choose the court applicable for the Customer's headquarters or the one applicable for the relevant branch of his/her company. The laws of the Federal Republic of Germany apply exclusively to all legal relationships between the contractual parties.

3.

The application of uniform, international UN sales law (CISG) is excluded.

## VIII. Severability Clause

Should one of the aforementioned provisions be or become ineffective, the validity of the remaining contractual stipulations shall remain unaffected. The ineffective contractual stipulation shall be replaced by one which most closely approximates the commercial intent and purpose of these provisions. The same applies in the event that these stipulations have any omissions or that they require interpretation.