

General Terms of Sales and Delivery of WITTMANN Technology GmbH and WITTMANN BATTENFELD GmbH

1. Applicability

1.1 These conditions are valid exclusively between us and the Customer in connection with our delivery of goods and other services (referred to collectively as 'Goods'). The Customer accepts the validity of these conditions for this and future business by agreeing to the contract.

1.2 These conditions remain valid in the event that we unconditionally deliver Goods and/or accept payments without objection in knowledge of contradictory terms and conditions of the Customer. Discrepancies from our terms and conditions or the business terms of the Customer are thereby ineffective and will not become a constituent part of the contract except if they are recognised wholly or partially by us in writing.

1.3 The congruent mutual written declarations apply for the scope of delivery of Goods. The validity of oral auxiliary agreements requires our written confirmation.

2. Conclusion of Agreement

2.1 Our offers are submitted without obligation. Subject to prior sale.

2.2 Diagrams, dimensioned drawings and similar illustrations submitted with our offers are approximations only and do not oblige us in any manner. We reserve the right to make any changes that we deem necessary.

2.3 The contractual agreement is concluded when we send our written order confirmation to the Customer. It is solely authoritative for the scope and execution of the order.

2.4 The Customer shall, prior to the conclusion of the Agreement, inform us of statutory, official and any other regulations that relate in particular to the execution of delivery of the Goods, the installation and assembly of the Goods according to Sect. 1.1, their operation; to health and safety at work; to foreign-exchange controls with regard to export and/or import transactions; and in general inform us of any and all regulations that may delay or impede the permits and licences in due time, failing which the legal consequences stipulated in Sect. 13 of these present Terms shall take effect.

2.5 The Customer is obligated to observe applicable European and foreign national law, insofar as it is applicable to the delivery of the Goods, relating to sanctions and embargoes. Specifically, our Goods shall not be knowingly provided by the Customer, either directly or indirectly, to persons, associations or businesses which have had economic and/or legal restrictions imposed on them by states or communities of states. The regularly updated EU sanctions lists can be viewed by the Customer at "www.sanctionsmap.eu".

3. Drawings and Documents

Offers, projects and corresponding drawings, descriptions, illustrations, samples, forms and similar that we submit are our intellectual property and may not be stored electronically, copied or duplicated nor brought to the attention of third parties in any way and also may not be used for the completion of works or components without our written permission. They must be returned immediately upon request if the order is not executed.

4. Prices

4.1 Our prices are valid ex works and plus the valid statutory turnover tax. They do not include the costs of packaging, transport insurance or freight and installation, which will be invoiced separately.

4.2 Taxes, fees relating to the Agreement, stamp duties, export, import and transit duties, discount interest, customs duties and fees, official commission fees and similar charges shall be borne by the Customer.

4.3 Should the rate of exchange of the currency specified in the invoice change with regard to the Euro – in particular, as a result of de- or revaluation – then the purchase price shall be calculated on the basis of the rate of exchange applying on the date that the Agreement was concluded.

5. Terms of Payment

5.1 All payments shall be effected in the specified currency to the credit of our account with the bank specified in the order confirmation or invoice.

5.2 Unless otherwise agreed in writing, one half of the purchase price shall be due and payable by the Customer upon receipt of the order acknowledgement, and the other half upon notification that the Goods according to Sect. 1.1 are ready for shipment.

5.3 The date of fulfilment is the day on which the sum is available to us. We only accept payment by draft on the basis of special agreement. Credit notes against drafts or cheques are always valid subject to receipt.

5.4 In the event that the Customer is in arrears on instalment payments (crediting of the purchase price), then the entire remaining unpaid price is due (loss of term).

6. Retention of Ownership (Legal Title)

6.1 Delivered Goods remain our property until satisfaction of all the Customer's payment obligations resulting from our business relationship (Goods subject to retention of title).

6.2 The Customer is not permitted to pledge or assign our Goods that are subject to retention of title. Resale is only permitted for Customers acting as re-sellers in the normal course of business and only on condition that the re-seller receives payment from his customer or includes the condition that the ownership is only transferred to the customer if he or she has entirely fulfilled his or her payment obligations. In the event of processing or connection of our Goods subject to retention of title our legal title extends to the product within the framework of the statutory possibilities.

6.3 In the event of seizure, confiscation, or other action by third parties the Customer must inform us of the action immediately.

6.4 If, when Goods are delivered abroad, statutory laws of the country where the Goods are located govern the retention of ownership, the Customer shall be obliged to take every step necessary to legally assert our retention of ownership (e.g. by attaching marks, effecting entry in public registers, or similar measures). If the laws of the country in which the delivered Goods are located do not allow a retention of ownership but does permit us thereof to reserve other rights with regard to such Goods, then we shall be entitled to exercise any and all such rights. Should the Customer fail to fulfil his obligation under this clause, then we shall be entitled either to withhold undelivered Goods until the Customer provides proof that he has fulfilled his obligation, or to rescind the Agreement immediately with the legal consequences stipulated in Sect. 13 of these present terms.

6.5 In the event of the violation of Customer obligations, particularly delayed payment or infringement of obligations in accordance with sections 6.2 to 6.4, we are entitled to reclaim the Goods irrespective of our rights in accordance with section 13 and the Customer is obliged to surrender the Goods that are subject to retention of title. The reclaim or assertion of the retention of ownership does not represent withdrawal from the contract except if this is expressly stated.

7. Delivery time, delivery period, delay

7.1 Information on the delivery time is approximate and non-binding if no agreement is reached to the contrary in writing from the factory.

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7.2 The delivery period begins at the earliest when the contract is agreed and the technical specifications of the order completely clarified, all formalities such as import and payment permits are completed, the payments as agreed, all securities paid, and other Customer liabilities fulfilled.

7.3 The deadline for delivery shall be deemed to have been met if the Goods are ready for shipment ex works by the date of said deadline. Should the Goods be inspected for acceptance in our works, then the date on which notification that the Goods are ready for inspection is sent to the Customer shall be deemed to have met the deadline.

7.4 The aforesaid deadline shall be prolonged:

7.4.1 if data that we require in order to fulfil the order are not provided in due time or rare subsequently modified or altered by the Customer.

7.4.2 if impediments arise that are beyond our control, irrespective of whether they originate within our sphere of operations, that of the Customer or a third party. For example: epidemics, mobilization, war, rebellion; severe disruption of business operations, accidents, labour disputes; belated or faulty delivery of necessary raw materials, semi-finished or finished products; scrapping of essential components, administrative measures, and natural phenomena.

7.4.3 if the Customer is in arrears with work to be done by him or with the fulfilment of his contractual obligations – in particular if he fails to comply with the terms of payment.

7.5 Should any of the circumstances enumerated in Sect. 7.4 prevail, then the deadline for delivery shall be prolonged by the span of time during which said circumstance prevails. If the impediment in the sense of section 7.4.2 continues for a period of more than 12 months then both contractual parties, in the event of an impediment in the sense of sections 7.4.1 and 7.4.3 we alone are entitled to withdraw from the contract in writing. Section 13.2 is valid accordingly for rescission of the services.

7.6 If a circumstance occurs in the sense of section 7.4 from the Customer's domain then the conditions in section 13 are valid corresponding. Interest payment will not be paid on any account on payments by the Customer that have already been received. The condition in section 12.2 is valid correspondingly.

7.7 If shipping or delivery is delayed for more than one month after notification of readiness for shipping at the request of the Customer then we can charge a storage fee of 0.5% of the price of the Goods in the delivery for each further month or part thereof to a maximum of 5% in total. We are still free to prove higher storage costs.

7.8 We are entitled to carry out partial or early deliveries where nothing to the contrary is agreed in writing.

7.9 Item 16 is valid for damage compensation.

8. Packaging

8.1 The Goods shall be packed in the manner usual and customary in the trade to protect them, under normal transport conditions, against the effects of the elements.

8.2 Special requests with regard to the packing of the Goods must be communicated to us in due time. Such notification shall be deemed to be in due time if the request can be satisfied without any delay or difficulty. Should the notification regarding the special manner of packing not be communicated in due time, or should the requested packing entail considerable additional work or expense, then we shall be entitled to refuse the request in writing. Such refusal shall not affect the Customer's obligations to effect payments.

8.3 Packing shall be invoiced separately and shall not be returned to us.

9. Freight and Insurance

9.1 The Customer shall, at his own risk and expense, arrange for the transport of the Goods. If the freight carrier is commissioned by us because this was agreed with the Customer then the Customer is still responsible for correct securing of the Goods during transport from one facility to the other to prevent sliding off, slipping, tipping, any mechanical action from outside and similar. If the Customer does not provide exact shipping regulations, then we will select the mode of transport.

9.2 The Customer shall, without delay, register and document any complaints regarding the transport of the Goods with the last freight carrier upon receipt of the Goods or the corresponding freight documents. The Customer shall further be obliged to file, without delay, any claims for damage in transport with the freight carrier in accordance with the terms of the contract of carriage or shipment and to notify us of such claim(s) at the same time.

9.3 The Customer shall be obliged to procure insurance coverage in the amount of the value of the Goods to be delivered for the shipment from our works to the point of delivery. Should we be contractually obliged to procure such insurance coverage, the costs and risks thereof shall nonetheless be borne by the Customer, and we shall in no case be liable for any damage incurred in transport.

10. Transfer of Risks and Benefits

10.1 The risk also transfers to the Customer for carriage paid delivery at the latest when the Goods leave the works, even in the case of partial deliveries or if we have accepted other services, e.g. the commissioning of the freight carrier, delivery and installation or the shipping costs.

10.2 Should the Goods leave our works belatedly, then the risks associated with the Goods shall be transferred to the Customer on the date of notification.

11. Acceptance of delivered Goods

11.1 The Customer shall, without delay, inspect delivered Goods according to Sect. 1.1 upon receipt thereof. Sect. 15.5 applies.

11.2 If the delivered Goods do not correspond to the contract regulations at acceptance then the Customer must immediately give us the opportunity to resolve the defects in accordance with item 15.

11.3 The Customer shall not be entitled to refuse acceptance of delivered Goods for non-conformance. If he nonetheless refuses acceptance, the provisions of § 373 of the Austrian Commercial Code as well as Sect. 13 shall apply mutatis mutandis to the Customer as an entrepreneur or legal person under public law according to §§ 1 - 3 of the Austrian Commercial Code.

12. Delivery delay

12.1 If we are in default with the delivery of Goods, then the Customer is entitled to fulfilment within reasonable time. If we are proven to be at fault, then he can alternatively select the right to withdraw from the contract by written declaration setting a reasonable extension. The reasonable nature of the extension is determined particularly by the scope of the Goods and also whether special design is required.

12.2 In the event that a partial delivery has been put to use by the Customer and if this can still be used by the Customer in principle then no withdrawal is permitted in respect to this partial delivery.

12.3 We only become liable for damage in accordance with section 16.

12.4 If the Customer withdraws from the contract then the services already provided must be reserved. Section 13.2 is valid correspondingly.

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12.5 If a transaction with a fixed date is not completed on time then we are only liable within the regulations in section 16.

13. Delay on the part of the Customer

13.1 Should the Customer come into arrears with a payment or default in other obligations (especially one according to Sect. 2.4 or 7.2 hereinabove), then we shall be entitled to demand that he fulfils his obligations and

13.1.1 to postpone the fulfilment of our own contractual obligations until such time as the overdue payment has been credited or the Customer has fulfilled his due obligation;

13.1.2 to extend the deadline for delivery by a reasonable period of time;

13.1.3 to declare the balance of the purchase price still outstanding as due and payable immediately (forfeit of payment by instalments) and

13.1.4 to charge statutory default interest at eight percentage points above the base interest rate and furthermore

13.1.5 to declare withdrawal from the contract giving a reasonable extension and

13.1.6 to demand compensation for damage caused to us through the delay and any costs for the necessary collection measures.

13.2 In the event of withdrawal the services already provided must be reserved. The Customer must release the received Goods to us and compensate us for the reduction in value in that time together with our costs, particularly transport costs, customs charges, fees, travelling costs, construction and administration costs etc. Costs also include expenses we had to incur for the purchase of parts of the Goods from third parties (sub-suppliers) or will still incur. The Customer will also receive the payments already made without interest and taking into account the above deductions. If special designs are involved, then we can make the parts available to the Customer and demand the corresponding proportion of the purchase price for them.

14. Right of Retention and Offsetting

The Customer may retain payments to secure claims against us or may offset such claims if recognised by us or by declaratory judgement.

15. Warranty

15.1 For our Goods according to Sect. 1.1, we assume warranty for defects resulting from a fault in the construction, material or design in accordance with the following provisions.

15.2 We will repair or replace faulty parts or services at our discretion. If this supplementary performance is ultimately unsuccessful, the Customer shall retain further rights, provided that they are not limited by Sect. 15 or 16. The Customer shall bear the burden of proof that the defect existed at the time of transfer of risk.

15.3 Parts that are replaced as part of a warranty claim are our property. If nothing else is agreed, then we are only responsible for costs incurred through the repair or replacement of the defective parts in our workshops.

15.4 The Customer undertakes to send the defective Goods or the defective parts to us or to a named third party at his risk and cost. Section 10 is valid for the delivery of rectified Goods or parts. If components of delivered Goods or delivered Goods as a whole are returned, then the Customer is required to compensate the depreciation of value of its time used.

15.5 The Customer is obliged to inform us immediately and in writing of the defect that has occurred or otherwise lose all claims to warranty.

15.6 Our warranty does not cover defects resulting from: natural wear and tear, improper maintenance, failure to follow operating instructions, excessive use or operation, use of raw materials or auxiliary materials that are unsuitable or of a nature that causes more wear than usual, chemical or electrolytic action, improper installation or assembly not carried out by us, and other causes beyond our responsibility.

15.7 Insignificant defects are excluded from the warranty, provided that these defects have not been caused deliberately or through blatant gross negligence. Insignificant defects are those which have no immediate or noticeable effect on the function of the system components or on the quality of the product to be created, particularly visual defects or similar.

15.8 The warranty is cancelled if the Customer or a third party undertakes modifications to or repair of the delivery according to Sect. 1.1 without our written authorisation or if the Customer does not immediately take suitable measures to prevent the defect from increasing.

15.9 If Goods according to Sect. 1.1 are custom-built based on engineering specifications, specifications and parameters with regard to software programming, or other guidelines, drawings or models from the Customer, our warranty for Goods shall not extend to the correctness of these engineering specifications, specifications and parameters with regard to software programming, or other guidelines, drawings or models from the Customer, but only to the execution of the design in accordance with the Customer's specifications. We have no duty to inspect or warn. The Customer shall indemnify, defend and hold us harmless from any claims for violation of patent or other property rights of third parties.

15.10 We assume no liability of any kind for old or third-party products in case of the acceptance of repairs, conversions or retrofits of old Goods according to Sect. 1.1, as well as third-party products. Old Goods are those for which the warranty period according to Sect. 15.11 has expired.

15.11 The warranty period is twelve months and begins with the transfer of risk, regardless of recognisability of any defect. After remedying a defect, a new warranty period of 12 months begins exclusively for the repaired or replaced parts, even if a different warranty period had been agreed for the original Goods according to Sect. 1.1.

16. Indemnification for Damages

16.1 Compensation claims by the Customer are excluded, to the fullest extent allowed by law, unless we attribute to the extent of intentional acts or blatant gross negligence. Any further liability for damages is excluded for any direct or indirect financial losses, including but not limited to consequential damages or loss of earnings. Regardless of this, any claims for damages are in all cases limited to half the value of the contract.

16.2 Compensation claims by the Customer come under the statute of limitations one year after transfer of risk.

17. Online and Direct Access

If we have the Customer's consent to access machines and devices of the Customer online or directly (e.g. with TeamViewer or similar) for the purposes of maintenance or repairs ("WebService"), our liability is excluded, unless we act deliberately or with blatant gross negligence. This does not apply to the violation of significant contractual obligations or damage to life, body or health. In these cases, our liability is limited to foreseeable damages that are typical of the contract. Regardless of this, any claims for damages are in all cases limited to half the value of the contract. The limitations and exclusions of liability shall not apply to legally mandated liabilities that do not depend on fault.

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18. Data Transmission

18.1 Various options for Goods according to Sect. 1.1 (e.g. Condition Monitoring System (CMS)) require bidirectional data transmission between the Goods in question and a cloud-based data server located within Europe in order to provide functions.

18.2. The data transmitted from the Goods in question to the data server includes device and process data as well as process parameters and operating statistics. This data is represented such that reference cannot be made to a specific application, manufactured product and information going beyond the machine and device or a person.

18.3 The Customer acknowledges that the data we transmit to the data server for automated or semi-automated analysis purposes may be collected in order to detect possible abnormal operating states, wear and fault conditions or to fulfill further functions defined in an individual agreement. The Customer also acknowledges that transmitted data may be used for further product developments. Data access is only provided to our personnel who are directly tasked with the fulfillment of the activities listed above.

18.4 If results of the analysis regarding the function of this option necessitate a corresponding response (e.g. warning, suggestion of change to setting parameters, etc.) for the Goods in question, the data necessary for the response is transmitted.

18.5 When an option that requires data transmission is activated, the Customer grants his express permission for the transmission and use of data in accordance with 18.2 through 18.4.

18.6 The Customer is aware of the security risks inherent in the system resulting in connection with the network-based connection of machines and devices, data transmission and cloud-based data servers ("infrastructure"). These security risks include, but are not limited to, the risk of a cyber-attack or other unauthorized access by third parties to the data, Goods, infrastructure or other devices that are connected to the infrastructure. The Customer acknowledges his responsibility for the installation and maintenance of suitable security measures for the best possible defense against the mentioned risks. In connection with these Goods and any options, we are not liable to the Customer for damages that result directly or indirectly from the consequences of a cyber-attack or a lack of or insufficient security measures for the infrastructure or beyond.

19. Software

19.1 An integral component or standalone part of Goods according to Sect. 1.1 may be proprietary software, to which we retain all rights. In this case, the Customer receives a limited license for the use of our proprietary software, subject to the following conditions.

19.1.1 The proprietary software may only be used in connection with the respective Goods.

19.1.2 The content of the proprietary software shall be treated as highly confidential.

19.1.3 The proprietary software shall not be copied, modified, decompiled or disassembled.

19.1.4 The Customer has the right to use the proprietary software from the time of delivery of the Goods until the Goods are no longer used by the Customer, the contract concerning the Goods is terminated, or a license or usage arrangement agreed in a license or usage agreement expires.

19.1.5 The Customer's right to use the copyright-protected software is non-exclusive and non-transferable without our prior written consent.

19.2 When a fixed-term license or usage agreement expires, access to the provided software is automatically deactivated after expiration.

19.3 For performance of the Goods, the Customer shall take appropriate security precautions, including the prevention of unauthorized access to the Goods and any personal data, and shall take all economically appropriate measures to prevent viruses and/or malware from being introduced and spread to the Goods.

20. Assistance Systems

20.1 Certain options for Goods according to Sect. 1.1 (e.g. HiQ Flow, etc. – "assistance systems") can identify and compensate for viscosity fluctuations that occur during the injection process. These options must be ordered separately.

20.2 The effectiveness of automatic compensation to minimize any process variation depends directly on prior, stable processing that has necessarily been configured by qualified specialist personnel. Stable, running processing provides the reference values for the internal function of the assistance systems.

20.3 In addition, when using assistance systems to minimize process variation, quality assurance is incumbent upon the Customer. The usual upstream and downstream quality assurance processes must still be applied and maintained by the Customer.

20.4 Any liability for damages or consequential damages resulting from process variation with an activated assistance system are excluded.

21. Place of Fulfilment, Court of Competent Jurisdiction

21.1 The place of fulfilment for the delivery of Goods according to Sect. 1.1 and for payments shall be the respective headquarters (for WITTMANN Technology GmbH: Vienna, Austria, and for WITTMANN BATTENFELD GmbH: Kottlingbrunn, Austria) and this shall apply even when Goods are, by agreement, delivered elsewhere.

21.2 For any disputes arising from this contract it is agreed that the court of jurisdiction is exclusively the responsible court for the respective above headquarters. However, we reserve the right to also assert our rights before any other court that is responsible for the Customer.

21.3 Austrian law is applicable for legal relationships resulting from this contract.

22. Miscellaneous

In the event that an agreed clause violates mandatory law, then the remaining clauses in this contract remain binding. Any invalid contractual condition will be replaced by a clause that comes as close as possible to its economic content. This is valid correspondingly for loopholes.