

Terms and conditions of sale and delivery (as of September 14, 2015)

I. General provisions

1. The below general terms and conditions of sale and delivery (hereinafter referred to as "General Terms & Conditions" or "GTC") will apply to any and all business relationships based on which Wittur Electric Drives GmbH (hereinafter referred to as the "Supplier") will undertake to sell and / or deliver goods to a customer (hereinafter referred to as "Purchaser"), regardless of whether the Supplier manufactures the goods on its own or procures the same from a third party. These GTC will govern the relationship with the same Purchaser as amended from time to time and also with regard to the future sale or delivery of goods without the need to specifically point to or agree such fact over again.
2. These GTC will only apply if the Purchaser is a businessman, a body corporate organized under public law or a special fund under public law respectively.
3. Any terms or provisions separately negotiated between the Supplier and the Purchaser will precede the provisions of these GTC.
4. Exclusively the Supplier's GTC will apply only. The general terms and conditions of the Purchaser will only apply as and if the Supplier expressly accepts the same. Such acceptance shall not be deemed granted through the mere unconditional performance on the part of the Supplier or merely because the Supplier did not expressly object to said general terms and conditions of the Purchaser.
5. With regard to software, the Purchaser will have the non-exclusive right of use with the agreed performance characteristics in unchanged form on the agreed hardware.

II. Formation of contract, scope of services

1. The offers or quotations submitted by the Supplier will be strictly non-binding and without engagement.
2. A binding offer to enter into a contract with the Supplier will only be submitted with the purchase order issued by the Purchaser. A contract will be formed between the interested parties upon acceptance of the Purchaser's offer by the Supplier, and more specifically through written confirmation of the order or the sale and / or supply and delivery of the ordered goods.
3. General information or specifications provided by the Supplier in relation to the delivery or service (such as weights, dimensions, serviceableness or practical values, load carrying capacities, tolerances or technical data or specifications, for example) as well as illustrations of the same (such as drawings or figures, for example) are merely indicative unless usability for the intended use as agreed in the contract would presuppose strict conformity. They are no guaranteed quality or material features, but merely descriptions or characterizations of the delivery or service only. Deviations customary in trade or deviations made due to legal regulations or that are made for the sake of technical innovation or improvement will be allowed unless they would impair usability for the intended use as agreed in the contract.
4. The Supplier hereby strictly reserves its absolute proprietorship and copyrights in any offers or quotations, cost estimates, product descriptions, drawings, calculations, models, catalogs or similar documents submitted to the Purchaser (hereinafter briefly referred to as "Documents"). Said Documents may be disclosed or made accessible to third parties in terms of their content or otherwise or used and / or reproduced by the Purchaser per se or by any third party subject to the prior written consent of the Supplier only. Said Documents must be immediately and fully returned to the Supplier upon request (including any copies made thereof) if no contract is formed between the interested parties or as soon as they are not needed anymore by the Purchaser for the further use of the purchased / delivered goods in the ordinary course of business after the contract has been duly performed.

III. Prices and terms of payment

1. Prices will be quoted for delivery ex works, excluding packaging, plus value-added tax at the applicable rate and any customs duties, fees or similar charges.
2. The prices conform to the current cost / expense situation at the time of contract formation. Should, after that and up to the agreed date of performance, any relevant cost factors for the owed delivery or service such as transportation costs or carrying costs, labor costs, material or raw material prices or distribution costs increase in total, for which the Supplier is not to be held responsible and without this having been foreseeable at the time of contract formation, the Supplier will be entitled to adjust the agreed price by any extra costs actually incurred.
3. Where the Supplier is mandated with erection and / or installation services and failing special agreement, the Purchaser will bear all required incidental costs such as traveling costs, transportation costs or accommodation allowances in addition to the agreed remuneration.
4. Amounts invoiced will be due for payment within thirty (30) days from the date of the invoice, strictly net. Here, the date of receipt of payment for the invoiced amount will be decisive for timely payment.
5. The Purchaser will only be entitled to set off or retain any counterclaims that are undisputed or final respectively.
6. The Purchaser will be deemed to be in default if it does not make payment within the agreed term of payment, and in such an instance the Supplier will be entitled to charge interest on late payment at a rate of nine percent (9%) above the respective prime lending rate. Assertion of damage caused by default will be reserved for the Supplier.
7. The Supplier will not be obligated to accept checks or bills of exchange, and such acceptance will only be on account of performance. Any costs incurred through such acceptance (such as discount charges, bill of exchange charges or similar) will be at the account of the Purchaser. Performance of the Supplier's pecuniary claim will only occur when the check or bill of exchanges will be honored.
8. The Supplier will be entitled to submit invoices to the Purchaser by electronic means, and more specifically by way of electronic mail.

IV. Reservation of title

1. The goods sold / supplied and delivered will remain the property of the Supplier until such time when any and all claims, present or future, to which the Supplier is entitled against the Purchaser under the contract or under any other ongoing business relationship will have been fully satisfied.
2. While said reservation of title is effective, the Purchaser will not be entitled to pledge or transfer by way of security any of the goods that are subject to the reservation of title.
3. The Purchaser will, however, be entitled to resell and / or process the goods subject to reservation of title in the ordinary course of business.

- a. Where the goods subject to reservation of title are processed, mixed or combined with other objects by the Purchaser, said reservation of title will then also cover the products thus formed at their full value whereby the Supplier will be deemed to be the manufacturer of such products. If any goods of third parties are involved in said processing, mixing or combination and if these remain the property of those third parties, the Supplier will obtain co-ownership in the products thus formed proportionately at the invoice values of the processed, mixed or combined goods. As for the rest, the same shall apply to the product formed as above as for the goods supplied and delivered under reservation of title.
- b. Where the goods subject to reservation of title and / or the product formed through processing, mixing or combination are resold, the Purchaser assigns any resulting claims against the buyer in full or at the rate of co-ownership of the Supplier according to the provision in the preceding paragraph to the Supplier by way of security with immediate effect, and the Supplier hereby accepts such assignment. The Purchaser will be entitled to collect the receivables alongside the Supplier. The Supplier will not use its right to collect said receivables for as long as its payment claims against the Purchaser will be duly honored by the latter and more specifically as long as the Purchaser will not be in arrears, no petition for insolvency proceedings is filed in relation to the assets of the Purchaser and / or there are no other facts suggesting lack of ability to perform on the part of the Purchaser. If, on the other hand, such reasons are existent, the Supplier may demand from the Purchaser to disclose the object and the scope of the assigned claims and the respective debtor as well as any other information and related documents that may be relevant to the collection of said outstanding debts. In addition to that, the Purchaser, upon request from the Supplier, shall then notify the respective debtors of said assignment of receivables.

4. The Purchaser shall immediately notify the Supplier in writing of any pledging, asset seizures or similar disposals or interventions on the part of any third parties with regard to the goods subject to reservation of title, to the products being formed through processing, mixing or combination and / or any receivables assigned to any third parties as a result of resale respectively.
5. In the event of breach of contractual obligations on the part of the Purchaser, more specifically if the Purchaser is in default of payment, the Supplier will be entitled to withdraw from the contract and take back the goods that are subject to reservation of title upon the unsuccessful expiration of a reasonable period of grace granted for the Purchaser. The Purchaser will be obligated to surrender said goods accordingly. Legal requirements regarding instances where the time limit may be waived shall remain unprejudiced.
6. Where and insofar as the realizable value of all collaterals due to the Supplier exceeds the total amount of its claims by more than ten percent (10%), the Supplier will, upon request from the Purchaser, release a respective part of said collaterals.

V. Scope of the obligation to deliver, time limits for supply and delivery or performance, default

1. Time limits for delivery or service to be made will be governed by the individual contractual agreement made between the Supplier and the Purchaser.
2. Adherence to the time limits for supply and delivery or performance will require the submission, in due time, of any documents, required permits or licenses or approvals by the Purchaser, and more specifically any drawings, as well as adherence to the agreed terms of payment or other such obligations of the Purchaser that are a prerequisite for the Supplier to discharge its duty to perform. If these requirements are not satisfied in due time, the time limits to be observed by the Supplier will be reasonably extended; however, this will not apply if the Supplier is to be held responsible for the delay.
3. If the Supplier is prevented from adhering to any time limit for supply and delivery or performance regardless of the above provision for any other reasons for which it is not responsible (non-availability of service), the Purchaser shall be advised of such fact without any undue delay. The time limit for supply and delivery or performance will then be extended by a period of time corresponding to the duration of impediment. If, on the other hand, this is not a mere temporary impediment, the Supplier may rescind from the contract or from parts thereof. In such an event, any consideration already paid by the Purchaser will be reimbursed with immediate effect. An instance of non-availability of service within the meaning as aforementioned will specifically be events of force majeure or the delayed supply of the Supplier by its sub-suppliers if a congruent coverage deal was concluded for the same, neither the Supplier nor its sub-suppliers are to be held responsible and the Supplier is not under any procurement obligations on a case-by-case basis.

4. The Supplier will be entitled to make partial deliveries if such partial deliveries can be used by the Purchaser for the intended use as specified in the contractual agreement, the supply and delivery of the remaining goods is guaranteed and the Purchaser will not incur any significant additional expenses from such partial delivery.

5. If the Supplier is in default for reasons it is responsible for, the Purchaser can demand liquidated damages for the damage caused by default at a rate of 0.5% of the net price for the delayed part of the delivery or service for each full week of delay, but no more than a maximum amount of 5% of the net price. The Supplier may prove that the Purchaser has not suffered any damage or a lesser damage only. The Purchaser may assert any claims beyond the provisions in Sentence 1 only in accordance with the provisions under VIII.

6. The Purchaser will be obligated, upon reasonable request from the Supplier, to declare within a reasonable period of time whether or not it will withdraw from the contract because of a delay in delivery or whether it will stick with the contract.

VI. Passing of risk, acceptance

1. Unless expressly agreed otherwise, delivery will be made ex works (place of delivery or performance). The risk of accidental deterioration or perishing will pass to the Purchaser upon the delivery of the goods ordered.

2. Upon the request and cost of the Purchaser, the ordered goods will be shipped to a different place than the place of performance or service as per para. 1 (sale to a place other than the place of performance). Unless agreed otherwise, the Supplier itself may determine the type of shipment and packaging at its equitable discretion. The shipment will be insured against theft, breakage, damage in transit, fire damage or loss or damage caused by water or similar insurable risks upon the express request of the Purchaser only. In the event of sale to a place other than the place of performance, the passing of the risk of accidental perishing or deterioration or of delay respectively will occur upon delivery of the goods to the carrier or forwarding agent or to the person designated to ship the goods respectively. Here, the commencement of the loading operation will be decisive.

3. If said delivery is delayed for reasons outside of the reasonable control of the Supplier, the risk of accidental perishing or deterioration or of delay respectively will pass to the Purchaser at the time at which the goods are ready for shipment and at which the Supplier has notified the Purchaser accordingly.

4. If acceptance of the goods is delayed for reasons for which the Purchaser is responsible, the Supplier may charge warehousing charges in the amount of 0.5% of the net price of the goods to be stored for each commenced month. The contracting parties will be free to furnish proof of higher or lower warehousing costs and the Supplier will be at liberty to claim further damages.
- VII. Warranty claims and other liability claims of the Purchaser**
1. The rights of the Purchaser in instances of material defects or defects in title (including wrong or short delivery, improper installation or defective instructions for installation) will be governed by relevant legal regulations unless stipulated otherwise here below. Special legal provisions for final delivery of the goods to a consumer will remain unprejudiced in all cases (supplier's redress according to Sections 478, 479 of the German Civil Code (BGB)).
 2. Liability for defects will be specifically based on the agreement reached as to the condition of the goods. Here, by agreement on the condition of the goods, we understand any designated product descriptions that are submitted to the Purchaser before the latter submits its offer of purchase or that are made component part of the contract similarly to these GTC respectively.
 3. Where no condition has been agreed, the determination whether or not the goods are defective shall be based on relevant statutory rules (Section 434 of the German Civil Code (BGB)). In contrast, the Supplier will not assume liability for any public statements made by the manufacturer or other such third parties (such as advertising messages, for example).
 4. Claims for defects on the part of the Purchaser will require for the Purchaser to have attended to its statutory duties of inspection, notification and rejection (Sections 377, 381 of the German Commercial Code (HGB)). If a defect is detected during such inspection or at a later time, the Supplier must be notified accordingly without any undue delay. Here, without any undue delay will mean within two (2) weeks whereby the notification must be sent within said period to be given in good time. Irrespective of said duties of inspection, notification or rejection, the Purchaser must report any obvious defects (including wrong or short delivery) in writing within two (2) weeks from delivery whereby, again, the notification must be sent within said period to be given in good time. If the Purchaser fails to proceed to due inspection and / or notification of defect, liability of the Supplier for the respective defect will be excluded.
 5. If the goods supplied and delivered are defective, the Supplier will, at its choice, proceed to supplementary performance through removal of the defect (rework) or through the supply and delivery of goods free from defect (replacement delivery) respectively. The right to refuse supplementary performance according to relevant legal regulations will remain unprejudiced.
 6. The Supplier will be entitled to make the supplementary performance owed dependent on the Purchaser paying the due purchase price. However, the Purchaser will be entitled to retain a reasonable share of the purchase price in relation to the severity of the defect.
 7. The Purchaser shall grant the Supplier the time and opportunity required to proceed to the supplementary performance owed, and more specifically deliver the goods rejected for inspection. In the event of replacement delivery, the Purchaser shall return the defective goods in line with relevant legal regulations. Supplementary performance will not include the removal of the defective goods or re-installation of the same if this was not included in the Supplier's obligations in the first place.
 8. The Supplier will bear any costs required for inspection or supplementary performance, and more specifically any transportation costs, shipping and handling, labor or material costs (but not the costs of removal or installation) if an actual defect is found. If, however, it is found that the Purchaser's request for rectification of defects was unjustified, the Supplier may request reimbursement of any costs incurred in the process.
 9. In urgent cases, such as in instances where the operational reliability or safety may be compromised or where disproportionate damage must be prevented, the Purchaser shall be entitled to rectify or eliminate the defect on its own and to request compensation for any actual expenses incurred in the process from the Supplier. The Supplier must be advised of such self-performance without any undue delay or in advance wherever possible. The right to self-help will not apply in instances where the Supplier would be entitled to refuse supplementary performance in accordance with applicable legal regulations.
 10. If supplementary performance has been unsuccessful or a reasonable time limit to be set by the Purchaser for said supplementary performance has expired unsuccessfully or if the latter is superfluous according to relevant legal regulations, the Purchaser may withdraw from the contract or reduce the purchase price respectively. However, no right of withdrawal will be available for negligible or immaterial defects.
 11. Claims on the part of the Purchaser for damages or for compensation of wasted expenditure will only be accepted in accordance with and subject to the following paragraph and will be excluded for the rest.
 - a. Unless otherwise stipulated in these GTC, the Supplier will assume liability for breach of contractual or non-contractual obligations in accordance with applicable legal regulations only.
 - b. Irrespective of the legal basis, the Supplier will assume liability for instances of malicious intent or gross negligence. Liability for instances of ordinary negligence will only be assumed as follows:
 - aa. for damage resulting from injuries to life, limb and health, and
 - bb. for damage resulting from the breach of material contractual obligations (viz. obligations that are a requirement for the due performance of the contract and on the compliance with which the contracting party usually relies or may rely); however, in such an instance, the Supplier's liability will be limited to compensation of typical damage reasonably foreseeable at the time of concluding the contract.
 - c. The limitations of liability arising from para. 11, letter b., will not apply if and insofar as the Supplier has fraudulently concealed a defect or has warranted the good condition of the goods respectively. The same will apply to any claims of the Purchaser in accordance with the Product Liability Act.
 - d. The Purchaser will only be entitled to withdraw from the contract for a breach of obligation that is not a defect if the Supplier is to be held responsible for such breach of obligation. The right of termination for convenience (specifically according to Sections 651, 649 of the German Civil Code (BGB)) is hereby excluded. For the rest, relevant legal requirements and legal consequences will apply.
12. By way of derogation from Section 438, para. 1, no. 3, of the German Civil Code (BGB), the general period of limitation for claims arising from defects of quality or title will be 1 (one) year from delivery. Where an acceptance inspection procedure has been agreed, the period of limitation will commence at the time of acceptance inspection.
 13. However, if the goods in question are a building or an object that is usually intended for use for or in a building and that has caused a defect in the same (construction material), the period of limitation according to legal regulations will be five (5) years from delivery (Section 438, para. 1, no. 2, of the German Civil Code (BGB)). Special legal regulations for claims for restitution based on a property right of third parties (Section 438, para. 1, no. 1, BGB), for fraudulent intent on the part of the Supplier (Section 438, para. 3, BGB) and for claims within the scope and limits of supplier's redress in instances of final delivery to consumers (Section 479 BGB) will remain unprejudiced.
 14. The above periods of limitation under sales law will also apply to contractual or non-contractual claims for damages on the part of the Purchaser that are based on a defect in the goods unless application of the regular statutory period of limitation (Sections 195, 199 of the German Civil Code (BGB)) would result in a shorter limitation in a given case. The periods of limitation under the Product Liability Act will remain unprejudiced in any case. As for the rest, exclusively the relevant statutory periods of limitation will apply to any claims for damages of the Purchaser in accordance with Section 11.
- VIII. Industrial or intellectual property rights; defects of title**
1. In accordance with the provisions in VIII., the Supplier will guarantee that the goods supplied and delivered by it will be free from any industrial or intellectual property rights of any third parties. Each contracting party will immediately advise the other contracting party in writing of any instances where claims are asserted against it for the breach of said rights.
 2. In case the delivery item should violate any industrial or intellectual property right of a third party, the Supplier, at its choice and at its costs, will modify the object in question such that no third-party rights will be violated anymore, but that the delivery item will still have the characteristics agreed in the contract or will obtain the right of use for and on behalf of the Purchaser through conclusion of a licensing agreement. If it does not manage to do so within a reasonable period of time, the Purchaser will be entitled to withdraw from the contract or to reduce the purchase price accordingly. Claims for damages by the Purchaser will be subject to the limitations according to the provisions in VIII.
 3. If any products supplied and delivered by the Supplier, but made by other manufacturers, infringe on any rights, the Supplier will, at its choice, assert its claims against the manufacturers or upstream suppliers for the account of the Purchaser and assign the same to the Purchaser. In such an instance, claims against the Supplier will only apply in accordance with the provisions in VIII. if the above claims could not be successfully legally enforced against said manufacturers or upstream suppliers, such as for reason of insolvency or similar.
- IX. Final provisions**
1. For any and all litigation arising directly or indirectly from the contractual relationship, the place of general jurisdiction will be Dresden / Germany if the Purchaser is a businessman within the meaning of commercial law, a corporate body under public law or public-law special funds respectively. The Supplier will also be entitled to file a lawsuit at the place of the registered offices of the Purchaser.
 2. The legal relationships arising out of or in connection with this contract will be governed by German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).
 3. Should any one provision of the contract and / or of these GTC be or become void or ineffective or should a gap in these provisions be found, the remaining provisions of this contract and / or of these GTC shall remain unprejudiced, valid and effective.