

Conditions of purchase

WILO SE, WILO EMU GmbH and WILO EMU-PORT GmbH (WILO)



Preliminary remarks

Our supplier's general business terms are effective only when and insofar as we have explicitly confirmed them in writing. Provisions agreed by individual contract take precedence over our conditions of purchase if these have been confirmed by us explicitly in writing at the latest by the conclusion of the agreement.

Should any one of the provisions in these conditions of purchase be invalid, the validity of the other provisions shall remain unaffected. Gaps in the regulations must be closed by means of a process of interpretation that takes into consideration the spirit and aims and also the economic objectives of our conditions of purchase.

As an alternative to this, the legal definitions can be applied.

1. Conclusion of the agreement

We place orders using these conditions of purchase as a basis. These conditions of purchase are also valid for all future business relations, even if they have not been expressly agreed in each case. Other conditions do not get included in the contract, even if we do not expressly reject them. Every order is to be confirmed either immediately or before the deadline given by WILO with a statement of our order data, the confirmed delivery date and an obligatory fixed price. We reserve the right to cancel orders whose confirmation has not reached us within the specified period of time. Contracts of all types, and any changes and additions to them, always need to be drawn up in writing. Oral agreements are binding on WILO only if they are confirmed in writing.

Reimbursement or compensation for attendance or preparation of tenders, projects, etc., is not provided.

2. Pricing, invoicing and payment

Only agreed prices are valid. These are always gross prices. Insofar as no particular agreements have been made, prices are inclusive of delivery and packing. Invoices that do not state our order number will not be dealt with. When a complaint about an invoice arises, the date of receipt of the disputed invoice is the deciding factor.

In the absence of any agreement to the contrary, payments shall be made by WILO within 14 days of receiving the delivery and after receipt of the invoice with a deduction of 3% cash discount, or within 30 days with a deduction of 2% cash discount or after three months net, according to our current choice. For as long as defects in delivery and performance are not completely eliminated, WILO shall be authorized to withhold payment of the invoice up to the full amount.

In the event of an earlier delivery than was agreed, the payment period begins only on the day on which delivery/fulfilment would have been due.

WILO is free to choose the means of payment.

If by way of exception no prices are stated, the list prices announced by the supplier at the time of ordering will be regarded as valid, with the above-mentioned deductions.

The agreement on the place of fulfilment will not be affected by the manner of price-setting.

Every shipment shall take place at the supplier's sole risk. This risk, and also the risk of accidental perishing or deterioration, shall remain solely with the supplier until delivery as stipulated in the contract has taken place to WILO's preferred dispatch address or shipping point.

Regarding the supplier's obligation to take back and recycle packaging the legal requirements shall apply. To this extent the supplier bears all costs for storage, return transport and disposal.

3. Delivery conditions, delay in delivery

Deliveries take place in accordance with Incoterms 2000, unless otherwise specified in these conditions of purchase.

Agreed delivery dates are binding. The decisive factor for meeting the delivery date or period is the arrival of the goods at WILO's specified place of reception or use, provided that the delivery has been carried out up to this point in accordance with the contract's terms of fulfilment or that WILO confirms that the delivery has been produced in time. If the supplier acknowledges that the agreed period cannot be kept to, for whatever reason, then the supplier has to report this immediately to WILO in writing with a statement of reasons and of the duration of the anticipated delay. If this does not happen immediately or if in WILO's view this delay is not acceptable, then WILO has the right, without stating reasons, to cancel either parts of the agreed delivery or the whole contract altogether, without the supplier's being able to exercise any rights in the matter.

The supplier is obliged to pay damages to WILO in accordance with the legal stipulations. The acceptance of a delayed delivery or payment implies no renunciation of the right to claims for damages. Before announcing cancellation WILO shall only be obliged to give the supplier a

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reasonable period of grace for performance or subsequent performance of the task, and to wait for this to elapse, if no delivery period was agreed. WILO is in addition entitled to declare cancellation even before the date on which the performance is due if it is obvious that the conditions for this are going to arise.

Where there is an agreed delivery period or deadline, with these conditions of purchase WILO makes its continued interest in using the supplier's services dependent on their timely provision of the performance, without exception, as stipulated in the agreement.

In cases of premature delivery, WILO shall be entitled either to return the goods at the supplier's expense or to store them at the supplier's own expense and risk until the agreed delivery date. Partial delivery will be accepted by WILO only when an explicit agreement has been made; when partial deliveries are agreed upon, the amount remaining shall be set down in writing.

Notwithstanding WILO's right to liability for defects, excess or under-deliveries shall be possible only with written consent. The same applies to any alteration in the place or process of manufacture.

Cancellation by WILO is excluded if WILO has sole or main responsibility for the circumstances that justify that cancellation, or if circumstances for which the supplier is not responsible arise at a time when WILO is in delay regarding the deadline for acceptance of the performance as stipulated in the contract.

4. Liability for defects

4.1 Guarantee

The supplier guarantees that all the components supplied by them and all the services provided by them comply with the latest technological developments, the relevant legal regulations and the regulations and guidelines set down by the authorities, trade associations, professional associations and EU standards. All the properties of the product shall be determined by EU standards and material safety data sheets respectively, insofar as no other standards have been explicitly agreed in writing with WILO. If no EU standards or material safety data sheets exist or have no – further – validity, the corresponding DIN standards shall apply, or, in the absence of these, trade practice, provided that these are not lagging behind the latest technological developments. The content and scope of the technical documentation shall be determined by EU guidelines and the EU member states in which the product is to be sold. Reference by the supplier to standards, material data safety sheets or factory test certificates as well as information on qualities, dimensions and usability are expressly guaranteed on the part of the supplier in respect of WILO.

4.2 Deviations and reservations

If it proves to be necessary in particular cases to deviate from these instructions, the supplier shall ask for written consent from WILO in good time. The supplier's contractual obligations shall not be affected by any such agreement. If the supplier has reservations about WILO's preferred method of carrying out the work, they shall report this in writing with a statement of reasons to WILO immediately.

4.3 Faults and defects

WILO shall not be obliged to examine the goods and open the packages. The supplier's statutory rights shall be unaffected in cases of obvious defect. In paying the invoice, no acknowledgement shall be made in respect of the fact that the product is ordered, complete or free from defect, and it shall not be deemed to be waiving any right to make a product-liability claim and any rights in connection with delays in delivery.

All defects in quality and differences in quantity and dimensions shall be considered hidden defects and render the supplier liable for defects, even if such defects are detected only by WILO's end buyer, unless they are obvious. The supplier shall be entitled to call upon the lack of a notification from WILO in the case of any defect in the goods supplied, if they requested WILO in the first instance at the time of delivery and with reasonable notice to check the supplied product for defects and to make a report to that effect.

4.4 Liability claims for faults or defects

In cases of faults or defects and in cases of non-justified partial delivery, WILO has the right to demand subsequent performance from the supplier, which shall consist either in the delivery of a fault-free item or remedying the defect. The supplier shall bear all the expenses incurred in carrying out the subsequent performance.

These include transport, freight, labour and material costs as well as the cost of outward and return shipping. If the subsequent performance is not successful, WILO shall be entitled to continue to demand subsequent performance.

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The supplier can object to the manner of subsequent performance chosen by WILO only when it is not possible to carry out the task without incurring disproportionate costs.

In this case WILO's claim shall be limited to the other manner of subsequent performance if the supplier provides WILO with written evidence of the disproportionate costs.

If the supplier does not meet the commitment to subsequent performance within a reasonable period to be specified by WILO, WILO shall be entitled either to take measures to obtain a replacement at the supplier's expense, to remedy the defects themselves or to have them remedied otherwise at the expense of the supplier. WILO may also implement a price reduction, insofar as there remains a decrease in value after this. Claims for damages on the part of WILO shall remain unaffected by this.

4.5 Period of liability for faults and defects and period of limitation

The period of liability begins at the earliest at the moment of handing over the product to WILO or to a third party named by WILO or at the named place of reception or use respectively, if no later date has been expressly defined.

The period of liability for defects amounts to three years from this moment; however, it shall be five years from this moment provided that it concerns supplied items that were used in accordance with their normal purpose in a building, and which caused this building to be defective.

The above-mentioned regulations shall also apply to the delivery of replacement parts.

If parts are delivered or improved within the context of the subsequent delivery, then the general regulations apply to the new start of the period of limitation as specified here or its inhibition.

4.6 Statutory requirements on liability for faults and defects

Provided that nothing expressly different is scheduled above, the statutory requirements shall be valid otherwise or as an alternative.

4.7 Product liability and recall

If a claim is made against us in respect of infringement of official safety regulations or on the grounds of product liability regulations or laws at home or abroad because of some fault or defect in our product which can be traced back to our supplier, then we shall be entitled to demand compensation for the damage from the supplier, to the extent that it is caused by the products they supplied. This damage also includes the costs of a precautionary product-recall plan.

4.8 Product liability insurance

The supplier shall take out insurance against all risks arising from product liability at an appropriate level and maintain it for a period of at least five years from the date of the order. The insurance policy shall be presented to us at our request.

This product-liability insurance must also cover so-called expanded product liability (e.g. removal and installation costs).

4.9 Quality assurance

The supplier shall carry out quality assurance of an appropriate type and scope which is in line with the latest technological developments, and be able to prove this on request. In as far as we regard this as necessary, they shall take out a corresponding quality-assurance agreement with us.

5. Patents and industrial property rights

The supplier shall indemnify and hold us and our clients harmless at any time during and after the agreement period from all damages and costs (including loss of profit, loss of use, production stoppages, penalties for breach of contract, legal expenses, etc.) that are incurred by us or our clients, in whatever context, in connection with the use or sale of the parts delivered by the supplier on account of any alleged infringement of patent, registered design, copyright, trademark or similar, and shall immediately compensate ourselves and our clients for any expenses and damages arising.

Should any claims of patent infringement, etc. be asserted against our clients or ourselves, the supplier shall be informed of this, with the requirement that they take all necessary measures to dismiss the claim at their own expense. We are permitted to demand reasonable securities from the supplier for foreseeable expenses and damages.

If as a consequence of a claim being lodged we should be prevented from using or selling any of the parts delivered by the supplier, and if the supplier is not in a position to obtain an entitlement to use for us from the copyright holder, then the supplier shall at once provide an equally

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appropriate replacement that does not infringe any copyright law, or at our request they shall modify the items supplied in such a way that patent infringement no longer applies. The supplier shall have no legal liability under this clause, insofar as they are not responsible for any loss or damage incurred by ourselves and/or our client.

6. Tools / moulds

Tools/moulds that we have entrusted to the supplier shall remain in our ownership; tools manufactured by the supplier or a third party for supply to us shall become our property on production. The supplier shall transfer all rights of use of these tools/moulds to us.

Every change of location shall be reported to us immediately. The tools/moulds shall be maintained so that they are capable of production. The supplier must clearly indicate on every tool/mould that it is to be used for the manufacture of products for us.

The supplier is obliged to return the tools/moulds to us or a third party nominated by us at our request if they have not fulfilled their contractual obligations to us or no longer have any to fulfil. A right of retention of the tools/moulds on the part of the supplier shall be excluded.

7. Obligations of confidentiality

The supplier is obliged to handle all non-public commercial or technical details that come to them via business connections with strict confidentiality, and not to make them available to any third party. They must ensure that their sub-contractors do likewise.

Our instructions on how to make up products ordered from us and also drawings prepared according to our instructions and our own drawings are neither to be made further use of by the supplier nor to be made available to third parties.

The supplier must surrender to us any benefit that they have drawn from the infringement of this obligation, in addition to paying compensation for any loss or damage arising.

8. Ban on sub-contracting

The supplier shall not be entitled to pass the order to a third party without our prior written consent.

9. Ban on assignment of claims

Without our prior written consent, which will not be unreasonably withheld, the supplier shall not be entitled to assign their claims against us.

10. Data protection

We will deal with personal information relating to the supplier in accordance with the Federal Data Protection Act.

11. Place of performance

In the absence of any agreement to the contrary, the place of performance for all obligations from the present contract shall be the point of dispatch named by WILO. Otherwise, the place of performance shall be Dortmund, Germany.

12. Place of jurisdiction

Hof shall be the place of jurisdiction for any disputes that may arise out of or in connection with this contract.

13. Applicable law

Unless otherwise stipulated above, this agreement is governed by the law of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods shall apply only where this has been explicitly confirmed by WILO in writing or where it is legally prescribed.