

# General Terms and Conditions for the Supply of Goods and Services (GTCs) of WILO SE

## I. General

All goods and services supplied by us to traders, public law bodies and special funds under public law are governed exclusively by these terms and conditions for the supply of goods and services. All legal relations, including future legal relations, between the Customer (Principal) and WILO SE (referred to hereinafter as "WILO") are governed by WILO's GTCs in the respective applicable version, which can be accessed at [www.wilo.de/agb](http://www.wilo.de/agb). Conflicting terms and conditions of the Customer are hereby expressly excluded.

## II. Offers

Our offers are subject to alteration and, like all agreements between the Customer and WILO, must be made in writing. The documents contained in the offer such as diagrams, illustrations, weights and measurements are indicative only, unless they have been expressly stated to be binding. WILO reserves the ownership and copyright rights to quotes, illustrations and other documents; these may not be made available to third parties.

## III. Order Confirmation, Goods/Services to be Supplied

If provided, the written order confirmation from WILO is authoritative regarding the time, type and volume of the delivery and service as well as the price. Minor alterations to the goods/services to be supplied in terms of construction, form and design and in the values stated in the description are permissible, provided this does not impede the intended use, the quality and the function.

## IV. Prices and Conditions of Payment

1. Unless separately agreed, prices are EXW (Incoterms 2000) including loading and standard road transit packaging. VAT is added to the prices at the respective applicable statutory rate. For delivery and performance deadlines more than four months from the conclusion of the agreement, WILO is entitled to levy an appropriate additional charge to reflect increases in the costs of materials or wages in comparison with its original calculation.
2. WILO invoices are payable either within 14 days of the invoice date with 2% discount or within 30 days of the invoice date net. However, in individual cases WILO reserves the right to deliver only in return for advance payment. Invoices for repairs and customer services are payable immediately, without any discount.
3. The following applies to contracts for work and contracts for labour and materials:  
  
Payment is to be made without reductions to the account of the supplier as follows:  
1/3 deposit upon receipt of order confirmation;  
1/3 upon notification of readiness for shipping of the main components;  
1/3 within one month of the transfer of risk.
4. The Customer is entitled to withhold payments or to set them off against counterclaims only insofar as counterclaims are uncontested or are final and non-appealable.
5. In the event of default in payment, interest will be charged at 8% p.a. above the basic rate of interest. WILO reserves the right to claim damages in excess of this amount.

## V. Delivery and Performance

1. The dates and deadlines stated by WILO are estimates. Delivery times and dates are binding only when these have been expressly confirmed in writing by WILO as final delivery times and dates. WILO's compliance with these is conditional on all commercial and technical issues between the Contracting Parties having been resolved and on the Customer fulfilling all obligations incumbent upon it, such as e.g. obtaining the requisite official certificates or permits or rendering payment of a deposit. If this is not the case, the delivery time shall be extended by a reasonable period. This does not apply if WILO is responsible for the delay.
2. The term for delivery and performance (term for delivery) begins upon receipt of the order confirmation and is met if the goods/services have left WILO's premises before the deadline expires or readiness for shipping has been notified. Insofar as acceptance is required, the acceptance date is authoritative – except in the case of justified refusal, or, alternatively, notification of readiness to accept.
3. The term for delivery shall be extended by a reasonable period in the case of measures as part of industrial action – in particular strike action and lockouts – and where unforeseeable hindrances occur that are beyond the control of WILO, provided such hindrances verifiably have a significant effect on the completion or delivery of the goods/services. This also applies where the circumstances occur at the premises of the upstream supplier.  
In important cases, WILO shall inform the Customer of the beginning and end of these kinds of hindrance as soon as possible.
4. If the delivery or, as the case may be, the acceptance of the goods/services is delayed for reasons within the responsibility of the Customer, it shall be charged, starting one month from notification of the readiness for delivery or acceptance, for the costs incurred as a result of the delay, but in the case of storage on site by WILO at least 0.5% of the invoice amount per month. The Customer has the right to furnish evidence that damage was not caused by the delay or is significantly lower than the lump sum.
5. Compliance with the delivery date is conditional upon the fulfilment of the Customer's contractual obligations.
6. The term for delivery is extended by a reasonable period if WILO itself does not receive a delivery from an upstream supplier on time.
7. If the Customer does not accept the goods without justification, WILO has the right, subject to the statutory conditions, to rescind the agreement and to demand compensation.

## VI. Transfer of Risk, Acceptance, Transport

1. The risk is transferred to the Customer at the latest with the delivery by WILO of the goods/services to the business premises, even when partial deliveries are made or WILO has assumed other services, e.g.

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shipping costs or delivery and assembly. Insofar as acceptance has to take place, this is decisive for the transfer of risk. It must be carried out without delay. Customer may not refuse acceptance where there is a non-material defect. At the Customer's request and at its costs, WILO will insure the delivery against theft, breakage, damage in transit, fire and water damages and other insurable risks.

2. If delivery is delayed as a result of circumstances beyond WILO's control, the risk is transferred to the Customer as of the day of readiness for delivery; WILO is, however, obligated at the Customer's request and at its cost to arrange the insurance requested by the latter.
3. Without prejudice to the rights under section VIII, delivered items are to be accepted by the Customer, even if they have non-material defects.
4. Partial deliveries are permissible, provided this is acceptable to the Customer.
5. Transport equipment (multi-use systems) is the property of WILO. Insofar as these are not exchanged or returned free of charge in perfect condition or paid for, these will be charged at market rates.
6. WILO is to be informed of any transport damages immediately.

### VII. Retention of Title

1. WILO retains title to the goods/services until all WILO's claims against the Customer arising from the business transaction have been satisfied. In the event of a breach of contract by the Customer, specifically in the event of default in payment, WILO has the right, after setting a deadline, to withdraw from the agreement and to take back the goods/services and the Customer is obligated to surrender the goods. The taking back or seizure of the item by WILO constitutes withdrawal from the agreement only if WILO expressly declares this in writing.
2. The processing or alteration of goods sold subject to reservation of title is always carried out by the customer on WILO's behalf. If the item subject to a reservation of title as per 2008 1 is combined or inseparably connected to other items that do not belong to WILO, WILO acquires joint ownership in the new item proportionate to the value of the item sold subject to retention of title to the other processed or combined items at the time of the processing or combination. If goods owned by WILO are connected or inseparably combined with other movable items into a single item and if such item is to be seen as the principal item, it is deemed to have been agreed that the Customer assigns to WILO pro rata joint ownership, insofar as the main item belongs to it. The Customer shall keep the property or joint property in safe custody for WILO. The item created through the processing, alteration, connection or combination is otherwise subject to the same rules as the goods sold subject to retention of title.
3. WILO has the right to insure the goods/services at the Customer's cost against theft, breakage fire, water and other damages, provided the Customer itself has not verifiably taken out insurance.
4. The re-sale of the delivered goods, irrespective of whether or not it has been processed, connected or

on the acceptance date, alternatively following notification to WILO of readiness for acceptance. The

combined, is permissible only for re-sellers in customary business transactions subject to retention of title and only if the claim under the re-sale is assigned to WILO. The Customer is prohibited from pledging the goods, transferring them by way of security or agreeing a prohibition on the assignment of claims. The Customer must immediately inform WILO of any infringement of WILO's rights by third parties.

5. The Customer hereby assigns to WILO all present or future claims to which it is entitled with regard to the goods supplied on the basis of the re-sale or for other legal reasons upon their creation in the amount of the value of the goods sold subject to retention of title (invoice amount). WILO hereby accepts the assignment.
6. The Customer is authorised until such authorisation is withdrawn to collect the claim arising from the re-sale. At WILO's request, the Customer shall inform the debtor of the assigned claim, provide the necessary information and documentation to assert its rights against the debtor and inform the debtors of the assignment.
7. WILO undertakes to release the security to which it is entitled to the extent that its value exceeds the claims to be secured (insofar as these have not yet been settled) by more than 20%.

### VIII. Warranty / Liability for Defects

WILO warrants with regard to material defects and defects in title of the goods/services that are notified in due form and on time, to the exclusion of further claims – subject to section IX – the following:

1. All deliveries or services that prove to be defective as a result of a circumstance preceding the transfer of risk are either to be improved or a substitute provided at WILO's discretion free of charge. WILO is to be informed of such defects without delay in writing. Replaced parts become the property of WILO.
2. Following agreement with WILO, the Customer must provide the time and opportunity necessary for WILO to carry out all improvements and substitute deliveries that it deems necessary; otherwise, WILO shall be released from liability for the consequences. Only in urgent cases of a threat to operational safety or to prevent disproportionately severe damages (in which case WILO must be notified immediately) does the Customer have the right to remedy the defect itself or have it resolved by third parties and to demand that WILO reimburse the necessary expenses.
3. WILO shall bear the direct costs of the replacement parts, including shipping, incurred as a result of the improvement or substitute performance carried out by it – provided the complaint proves to be justified. Reasonable de-installation and installation costs shall be reimbursed in accordance with the statutory provisions. This applies accordingly to the costs involved in determining the cause of the defect.
4. Otherwise, the Customer's claims against WILO are restricted, in full or with regard to individual parts, to a right to subsequent performance. Only in the case of failure to effect subsequent performance can the

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Customer choose either to reduce the payment amount or withdraw from the agreement.

5. If the defect is non-material, the Customer only has the right to a reduction of the contract price.
6. No guarantee is provided in the following cases in particular: unsuitable or incorrect use; incorrect installation, in particular installation that does not comply with technical standards; operation and/or use by the Customer or third parties that does not comply with technical standards; natural wastage or wear and tear of the goods (e.g. mechanical seals, rotating pump components); incorrect or negligent use; incorrect maintenance; unsuitable equipment; unsuitable means of transport; defective construction work; unsuitable foundation soil, chemical, electrochemical or electrical influences – provided these are not the responsibility of WILO.
7. If the Customer or a third party incorrectly improves an item, WILO is not liable for the consequences. The same applies to any alterations made to the goods/services without WILO's prior consent.
8. If the goods/services breach national laws on industrial property rights or copyright, WILO shall as a general rule procure at its own cost the right to further use for the Customer or modify the goods/services in a way that is acceptable to the Customer such that the infringement of industrial property rights is remedied. If this is not possible under reasonable economic conditions or within a reasonable time period, the Customer has the right to rescind the agreement. Subject to the conditions stated, WILO also has a right to rescind the agreement. Furthermore, WILO shall release the Customer from uncontested or final, non-appealable claims by the relevant holder of the protective right.
9. Notwithstanding Section IX.1, WILO's obligations as set forth in Section VIII.8 are comprehensive in the case of a breach of industrial property rights or copyrights.  
They apply only if
  - the Customer informs WILO immediately of any claims of breach of protective rights or copyright,
  - the Customer supports WILO to an appropriate degree in defending the asserted claims or makes it possible for WILO to carry out the modification measures in accordance with Section VIII.8,
  - all defence measures, including out-of-court settlements are reserved to WILO,
  - the defect is not based on an instruction from the Customer and
  - the contravention was not caused by the Customer altering the goods supplied without authorisation or otherwise using it contrary to the contractual provisions.
10. In the case of the sale of used appliances, all warranty is excluded. However, if such appliances are repaired in full or in part by WILO pursuant to an agreement, the following condition applies to the warranty: the warranty applies only to those parts that WILO was required by contract to renew or repair.
11. The statute of limitation for all warranty claims is two years from the date of manufacture (date, reference number), but at least one year from the beginning of the statutory period of limitation. The conditions set forth in Section 438 (1)(2) or in Section 634a (1)(2) of the German Civil Code shall remain unaffected.

### IX. Liability

1. The Customer's right to demand compensation for fault-based claims is restricted to cases of
  - a) deliberate acts or gross negligence on the part of WILO, its legal representatives or agents,
  - b) the negligent breach of material contractual obligations (cardinal obligations),
  - c) the malicious concealment of defects,
  - d) the assumption of a guarantee,
  - e) the culpable damage to life, limb or health by WILO, its legal representatives or agents or
  - f) defects in goods/services, in regard to which the Product Liability Act prescribes liability for personal injury or damage to private property.
2. In the event of a negligent breach of material contractual obligations (cardinal obligations) the claim is limited to the amount of the foreseeable damages typical for this kind of contract.
3. All further compensation claims are excluded.
4. Compensation claims against WILO, its agents or vicarious agents become time barred within one year of the beginning of the statutory period of limitation.
5. If WILO or its employees provide advice and information prior to, upon or following the conclusion or in another connection or make recommendations, WILO is liable for this only if WILO agreed and received special payment and the advice, the information or the recommendation was made in writing. In such case, WILO is liable in the case of fault up to 25% of the payment agreed for the advice, etc. This limitation of liability does not apply where clauses 1 a), b), d) and e) apply.

### X. Purchase of Consumer Goods

The Customer's rights under the provisions on the purchase of consumer goods (Sections 474 to 479 BGB) are not affected by the preceding rules. In particular, the Customer's right to recourse vis-à-vis WILO on account of a defect in an item sold to a consumer in accordance with Section 478 BGB remains unaffected.

### XI. Alteration and Marking of Goods

1. Any alteration to the goods/services requires WILO's prior written consent.
2. Any alteration by the Customer or third parties to the marking of the goods/services, in particular the serial number or other code and any special stamp that constitutes a designation of origin and could give the impression that this is a special item, is prohibited.

### XII. Recalls / Returns

WILO is not required to take back (exchange) an item that was supplied in perfect condition. Whether of not it takes an item back is subject to WILO's discretion. Returns are accepted only if WILO has provided prior written agreement. The approved item for return must be returned to WILO's premises with the completed returns label, quoting the invoice number. WILO has the right to deduct a lump-sum fee for the costs incurred as a result of the return without the requirement to furnish special proof.

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### XIII. Special Provisions for Non-Warranty Repairs

1. WILO shall carry out repairs or processing of delivered goods outside of the warranty only in return for payment.
2. On receipt of the goods, WILO shall prepare a written offer. If the offer is not accepted within three months of posting, WILO is entitled to destroy the appliance, unless the sender has requested in writing that WILO return the appliance.
3. WILO shall inform the sender if it realises, prior to or during the processing/repair, that it is unfeasible. If the sender does not comment on the beginning or continuation of the processing/repair within two months of posting the notice, WILO is entitled to destroy the appliance.
4. WILO is entitled to reimbursement of the costs for dismantling and inspecting the appliance and other parts even if repairs are not carried out.
5. The Customer shall bear the delivery costs related to repair orders.
6. WILO has a retention right based on its claims against the Customer; if the Customer is also the owner of the appliance, WILO also has a right of lien over the items in its possession. It is sufficient for WILO to send written notification to the last known address of the Customer to provide advance notice of an enforced sale. The selling period is three weeks from postage of the notice, unless WILO deems an earlier sale advisable.
7. WILO holds title transferred as security in goods returned after repair until full payment of the liabilities under the business relationship. Following return of the appliance, WILO may make use of the right to surrender under the security ownership only if the debtor does not render payment, despite default in payment and expiry of an additional period of at least 14 days. Until that time, the Customer is entitled to use the item on a loan basis.
8. WILO is entitled to set conditions and to deliver only upon receipt of all amounts owed by the Customer or to return the repaired appliance in return for the carriage forward of all amounts owed by the Customer. If the recipient exercises its right to refuse acceptance, WILO shall be entitled to sell pledged property in accordance with Clause 6 sentences 2 and 3, and, in the event of an excess upon realisation, is obligated to reimburse this amount as specified in Clause 10.
9. The rights set forth in Clauses 6-8 may also be asserted as a result of claims based on legal reasons other than this repair.
10. In the event of the utilisation of the security right, WILO is required to reimburse the resultant proceeds to the owner of the appliance, provided the proceeds exceed WILO's claims, including interest and expenses.

### XIV. Software Use

Where the delivery includes software, the Customer is granted a non-exclusive right to use the software supplied, including the accompanying documentation. This right is granted solely for the purposes of the use of the goods/services. Use of the software on more than one system is prohibited, unless the terms of the license provide otherwise. The Customer and WILO agree that in any case the software is subject to protection under

Section 69a German Copyright Act (Urhebergesetz, UrhG). The Customer may use the software only as permitted by law (Section 69a ff. UrhG). Copying, reworking, translation or conversion of the object code in the source code is impermissible. The Customer undertakes to observe manufacturer's data - in particular copyright statements, not to remove these or to alter them without WILO's prior express agreement. All other rights in the software and documentation, including copies, remain with WILO or the supplier of the software. The granting of sub-licenses is impermissible. WILO is entitled, following prior announcement and within normal business hours to carry out software updates, without this altering the warranty or expiry. In the event of a re-sale, the Customer shall pass this duty on to its customers; if such customer is itself a re-seller, the duty to pass on this obligation continues to the end customer.

### XV. Place of Performance, Legal Venue, Applicable Law, Miscellaneous

1. The place of performance for all transactions involving WILO SE is Dortmund. The place of performance for all transactions involving WILO EMU GmbH is Hof.
2. If the performing party was WILO SE, the legal venue for all disputes with traders, public law bodies and special funds under public law is Dortmund. If the performing party was WILO EMU GmbH, the legal venue is Hof. Both WILO SE and WILO EMU GmbH are also entitled to file at the Customer's registered seat.
3. The law of the Federal Republic of Germany applies, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG). This also applies to all written agreements concluded in the context of the business relationship, unless they contain an alternative applicable law clause.
4. Side-agreements, amendments and/or additions must be made in writing. This also applies to the waiver of the written form requirement.
5. Should a provision in these terms and conditions or a provision in other agreements be or become invalid, this shall not affect the validity of the remainder of the provisions or agreements. A valid provision that comes as close as possible to the intention of the parties is deemed to have been agreed in place of the invalid provision. The same applies in the event of an omission.