

## **General Delivery Terms of Wälischmiller Engineering GmbH for Business Transactions with Contractors (“T&Cs”)**

### **Article I: General Provisions**

1. The legal relationships between Wälischmiller Engineering GmbH (referred to as “**supplier**”) and the customer associated with the supplier’s deliveries and/or services (referred to as “**deliveries**”) are exclusively governed by these T&Cs. The customer’s T&Cs apply only insofar as the supplier has expressly agreed to them in writing. The mutually consistent written statements are authoritative for the scope of the deliveries.
2. The supplier unconditionally reserves their ownership and originator rights of use to cost estimates, drawings and other documents (referred to as “**documents**”). The documents may be made accessible to third parties only following the supplier’s prior consent; if the order is not placed with the supplier, the documents are to be promptly returned to them upon request. Sentences 1 and 2 also apply to the customer’s documents; they may, however, be made accessible to those third parties whom the supplier has permissibly assigned deliveries.
3. In terms of standard software and firmware, the customer has the non-exclusive right of use with the agreed performance features in unaltered condition on the agreed devices. The customer may back up the standard software without express agreement; in terms of the rest of the software, this only applies with the supplier’s consent.
4. Partial deliveries are permissible unless they are unreasonable for the customer.
5. The term “**claims for damages**” in these T&Cs also includes claims for compensation of futile expenses.

### **Article II: Prices, Payment Terms, Offsetting and Retention**

1. Prices are ex works including packaging, plus applicable statutory value-added tax.
2. If the supplier has assumed responsibility for erection or assembly and nothing else has been agreed, the customer bears the agreed remuneration and all the required ancillary costs such as travel and transport costs as well as accommodation.
3. The net purchase price is due within 30 days from invoice date or due as per offer. After the due date, default interest as per the currently valid regulation in the BGB (German Civil Code) is incurred. The supplier reserves the right to assert claims for further damages caused by default.

4. The customer is entitled to offsetting and to exercise their right of retention only insofar as their counter-claims are undisputed or have been legally established. In addition, the customer can only assert rights of retention for counter-claims from the same contractual relationship.

### **Article III: Retention of Title**

1. The delivery items (reserved goods) remain the supplier's property until all their claims against the customer arising from the business relationship have been met. Insofar as the value of all the security interests the supplier is entitled to exceed the amount of all the secured claims by more than 10%, the supplier releases a relevant portion of the security interests upon the customer's request; the supplier has the right to choose which of the security interests to release.
2. While the customer's retention of title exists, pledging or using it as security is prohibited and resale is only permitted to resellers in the ordinary course of business and only on condition that the reseller receives payment from their client or reserves that the property transfers to the client only after they have fulfilled their payment obligations.
3. If the customer resells reserved goods, they shall assign their future receivables from resale to their clients with all ancillary rights—including any balance receivables—to the supplier as securities without the need for further special statements. If the reserved goods are resold together with other items without agreeing an individual price for the reserved goods, the customer transfers that share of the total asking price to the supplier which corresponds to the price of the reserved goods billed by the supplier.
  - 4.1. The customer is entitled to process the reserved goods or to mix or combine them with other items. Processing is done for the supplier. The customer stores the resulting new good for the supplier with the care of a regular merchant. The new good is considered reserved goods.
  - 4.2. Supplier and customer have already consented that in the event of combining or mixing with other items not belonging to the supplier, the supplier is entitled in any case to co-ownership of the new good amounting to the share resulting from the ratio of value of the combined or mixed reserved goods to the value of the remaining goods at the time of combining or mixing. The new good is considered reserved goods in this respect.
  - 4.3. The regulation about assignment of receivables according to Digit 3 also applies to the new good. However, the assignment only applies to the amount corresponding to the value of the processed, combined or mixed reserved goods billed by the supplier.

- 4.4. If the customer combines the reserved goods with plots of land or moveable objects, they also assign to the supplier as securities, with all the ancillary rights, the receivables they are entitled to as compensation for the combining, amounting to the ratio of the value of the combined reserved goods to the remaining combined goods at the time of combining.
5. The customer is entitled to collect assigned receivables from resale until this entitlement is withdrawn. In the event that an important reason exists, in particular in the event of the customer's default of payment, cessation of payment, filing for insolvency proceedings, protest of a bill or substantiated indications for excessive debts or impending insolvency, the supplier is entitled to terminate the customer's direct debit authorisation. In addition, the supplier may disclose, upon prior threat and in meeting a reasonable deadline, the assignment for security, utilise the assigned receivables and require the customer to disclose to the client the assignment for security.
6. In the event of pledging, seizure or other disposition or intervention by third parties, the customer is to promptly notify the supplier. In the event that legitimate interest is made plausible, the customer is to promptly provide to the supplier the information required to assert their rights against the client and to hand over the required documents.
7. If the customer fails to fulfil their obligations, in particular in the event of default of payment, the supplier is not only entitled to repossession but also to withdrawal if a reasonable deadline to the customer expires without success; statutory provisions about the dispensability of a deadline remain unaffected. The customer is obligated to surrender the item. The supplier's repossession and/or assertion of retention of title or pledging of the reserved goods does not constitute a termination of the contract unless the supplier expressly declares it as such.

#### **Article IV: Delivery Deadlines; Default**

1. Compliance with delivery deadlines requires (i) the timely receipt of all the documents, necessary approvals and releases, in particular of plans, to be supplied by the customer; and (ii) the customer's adherence to the agreed payment terms and other obligations. We reserve the right to object to an unfulfilled contract. Failing to meet these requirements in time, reasonably extends the deadlines; this does not apply if the supplier is responsible for the delay.
2. If non-compliance with the deadlines was caused by

- 2.1. obstructions because of German, EU, US or other applicable international foreign trade or export control law stipulations such as delays on the side of government agencies when processing export licence applications or because of other conditions which the supplier is not responsible for; or
- 2.2. non-timely or incorrect delivery to the supplier by upstream suppliers;  
  
the periods are reasonably extended.
3. Customer claims for damages because of delayed delivery and claims for damages in lieu of performance are excluded in all cases of delayed delivery, even if a deadline given to the supplier has lapsed. This does not apply insofar as there is liability in cases of intent, gross negligence or because of injury to life, body or health. The customer can terminate the contract in line with statutory provisions only insofar as the supplier is responsible for the delay of delivery.
4. Upon the supplier's request, the customer is obligated to declare within a reasonable period whether they are terminating the contract because of the delay of delivery or whether they insist on delivery.
5. If despatch or shipment upon the customer's request is delayed by more than one month after despatch readiness has been notified, the customer can be charged, for every further started month, warehousing fees amounting to 0.1% of the price of the delivery items, but only up to a maximum of a total of 5%. The contractual parties are entitled to request/provide evidence of higher or lower warehouse costs.

#### **Article V: Transfer of Risk**

1. Even with freight paid deliveries, the risk transfers to the customer as follows:
  - 1.1. in case of delivery without erection or assembly—when taken to or picked up for despatch. Upon the customer's request and costs, the supplier shall insure the delivery against common transport risks;
  - 1.2. in case of delivery with erection or assembly—on the day of adoption into the customer's operations or, insofar as agreed, following successful test operation.
2. If the customer is responsible for a delay in despatch, shipment, start/execution of erection or assembly, adoption into the customer's operations or test operation or if the customer delays acceptance for other reasons, the risk transfers to the customer.

#### **Article VI: Erection and Assembly**

The following provisions apply to erection and assembly, unless otherwise agreed in writing:

1. On their own expense, the customer is to provide on time:
  - 1.1. all earthwork, construction and other non-industry-related ancillary works including the skilled and auxiliary staff, materials and tools needed for them;
  - 1.2. the consumer goods and materials such as scaffolding, hoists and other devices, fuel and lubricants required for assembly and commissioning;
  - 1.3. power and water to the site of use, including connections, heating and lighting;
  - 1.4. at the assembly site: sufficiently large, suitable, dry and lockable rooms to store machine parts, equipment, materials, tools, etc. and reasonable work and common rooms for assembly staff including sanitary installations that are proper in the circumstances; otherwise, the customer is to take action on the building site to protect the supplier's and the assembly staff's possessions as they would their own possessions.
  - 1.5. protective clothing and protective devices which are necessary at the assembly site as a result of particular circumstances.
2. Before the start of assembly work, the customer is to automatically provide the necessary information regarding location of hidden electricity, gas and water supply lines or similar installations as well as regarding structural details.
3. The supplies and items which are necessary for starting the work are to be provided at the erection and assembly site before the start of erection or assembly and all preparatory work which is necessary before the erection work can begin must have reached such a stage that erection or assembly can begin in accordance with the contract and implemented without interruption. Access routes and the erection or assembly site are to be levelled and cleared.
4. If erection, assembly or commissioning are delayed for reasons the supplier is not responsible for, the customer is to bear the costs in reasonable scope for supplier or assembly staff waiting times and additionally required trips.
5. The customer is to provide the supplier with a weekly statement of the time worked by the assembly staff and to promptly confirm the end of erection, assembly or commissioning.
6. If the supplier demands the acceptance of the delivery after completion, the customer is to do so within two weeks. If the customer lets the two-week period elapse or if the delivery is put to use—after completion of an agreed test phase, if necessary—this is equivalent to acceptance.

## **Article VII: Acceptance**

The customer must not refuse to accept deliveries for insignificant defects.

## **Article VIII: Material Defects/Warranty**

The supplier is liable for material defects as follows:

1. The prerequisite for any customer warranty rights is their proper fulfilment of all inspection and objection obligations pursuant to Sect. 377 HGB (German Commercial Code). Customer notices of defect are to be promptly made in writing.
2. At the supplier's discretion, all those parts or services that have a material defect are to be reworked, redelivered or reperformed at no costs if the cause of such defect was already present at the time of transfer of risk.
3. Claims for subsequent fulfilment become time-barred 12 months after the begin of the statutory limitation period; the same shall apply to withdrawal and reduction. This period does not apply:
  - insofar as the law according Sect. 438 Para. 1 Digit 2 (building structures and components for building structures) and Sect. 634a Para. 1 Digit 2 (defects or deficiencies in the construction) BGB demands longer periods;
  - in the event of intent;
  - in the event of malicious non-disclosure of the defects; and
  - in the event of non-compliance with a quality guarantee. Customer claims for expenditure according to Sect. 445a BGB (seller's recourse) also become time-barred 12 months after the begin of the statutory limitation period, provided that the last contract in the supply chain is no consumables purchase. Statutory regulations about expiry suspension, suspension and restart of the periods remain unaffected.
4. In the event of notices of defect, Art. II Digit 4 applies in terms of the right of retention. Insofar as a right of retention exists afterwards, customer payments may only be retained to an amount that is commensurate with the emerged material defects. The customer has no right of retention if their claims for defects are time-barred. If the notice of defect was without good reason, the supplier is entitled to request reimbursement of the incurred expenses from the customer.
5. The supplier is to be given an opportunity for subsequent fulfilment within an adequate period of time (at least 14 working days).
6. If subsequent fulfilment fails, the customer can—regardless of potential claims for damages according to Digit 10—terminate the contract or reduce payment.

7. Claims for defects do not exist for (i) insignificant deviation from the agreed consistency; (ii) insignificant impairment of usability; (iii) natural wear; and (iv) damage occurring after the transfer of risk, which results from (a) defective or negligent treatment; (b) excessive strain; (c) inadequate resources; (d) faulty construction work; (e) unsuitable foundation soils; or (f) special external influences that are not presumed according to the contract; and (v) non-reproducible software errors. If the customer or third parties perform improper alterations, installations/removals or repairs, these and the consequences resulting from them also constitute no basis for claims for defects.
8. Customer claims in connection with expenses necessary for the purpose of subsequent fulfilment are excluded if the costs increase because the item to be delivered has subsequently been shipped to a place other than the customer's place of business, unless such shipment is necessary for the intended use. This also applies to customer claims for expenditure according to Sect. 445a BGB (seller's recourse), provided that the last contract in the supply chain is no consumables purchase.
9. Customer recourse claims against the supplier according to Sect. 445a BGB (seller's recourse) exist only insofar as the customer has not entered into any agreements with their buyer exceeding legal claims for defects.
10. Customer claims for damages due to a material defect are excluded.

This does not apply in the event of (i) malicious non-disclosure of the defect; (ii) non-compliance with a quality guarantee; (iii) injury to life, body or health; and (iv) the supplier's intentional or grossly negligent breach of duty.

Customer claims for a material defect that go beyond or differ from those regulated in this Art. VIII are excluded. This applies in particular to damage—regardless of its legal reason—that emerged not on the goods themselves; in particular, there is no liability for the customer's loss of profit or other financial losses. In the event of special constructions, liability for defects or damage based on customer specifications is excluded.

The liability sum is limited to the amount of the order value. Further claims are excluded to the extent permitted by law.

Insofar as contractual liability is excluded or limited, this also applies to the personal liability of employees, representatives and vicarious agents.



## **Article IX: Industrial Property Rights and Copyrights; Defects of Title**

1. Unless otherwise agreed, the supplier is obligated to make the delivery only in the country of the delivery location without infringing third parties' industrial property rights and copyrights (referred to as "**property rights**"). Insofar as a third party issues justified claims against the customer because contractually used deliveries made by the supplier infringe property rights, the supplier assumes liability towards the customer within the period specified in Art. VIII Digit 3 as follows:
  - 1.1 At their discretion and expense, the supplier shall either obtain a right of use to the relevant deliveries, alter them so they do not infringe the property right or replace them. If the supplier is unable to do so in reasonable conditions, the customer is entitled to statutory rights of withdrawal or rights to reduce the purchase price.
  - 1.2 The supplier's obligation to pay damages is governed by Art. XII.
  - 1.3 The supplier's obligations as mentioned above only apply insofar as (i) the customer promptly informs the supplier in writing about the claims made by the third party; (ii) does not recognise the infringement; and (iii) all defence measures and negotiations on a settlement are left to the supplier. If the customer ceases to use the delivery in order to reduce the damage or for other important reasons, they undertake to inform the third party that cessation of use does not imply recognition of infringement of property rights.
2. Customer claims are excluded insofar as they are responsible for infringing the property right.
3. Customer claims are also excluded insofar as the infringement of the property right is caused by (i) certain customer specifications; (ii) an application the supplier cannot foresee; or (iii) the customer altering the delivery or using it with products not delivered by the supplier.
4. In the event of infringement of property rights, the provisions of Art. VIII Digits 4, 5, 8 and 9 apply accordingly to the customer's claims governed in Digit 1.1.
5. In the event that other defects of title are present, the provisions of Art. VIII apply accordingly.
6. Customer claims against the supplier and their vicarious agents for defects of title that go beyond or differ from those regulated in this Art. IX are excluded.



#### **Article X: Caveat of Fulfilment**

1. The contract is fulfilled under the caveat that no obstructions due to German, EU, US or other applicable international foreign trade or export control law stipulations, including embargoes and sanctions, prevent it (such as a denial on the side of government agencies of required export licences, statutory export bans.)
2. The customer is obligated to promptly provide all the information and documents needed for export, shipment and/or import.

#### **Article XI: Impossibility; Adaptation of Contract**

1. Insofar as delivery is impossible, the customer is entitled to claim damages unless the supplier is not responsible for the impossibility. However, the customer's claim for damages is limited to 10% of the value of that portion of the delivery that cannot be used as intended because of the impossibility. This limitation does not apply if liability is assumed in the event of intent, gross negligence or injury to life, body or health; this does not bring about a change of the burden of proof to the customer's disadvantage. The customer's right to terminate the contract remains unaffected.
2. Insofar as events according to Art. IV Digits 2.1 to 2.2 occur which (i) are of economic significance; (ii) fundamentally change the content of the delivery; or (iii) significantly impact the supplier's operations, the contract shall be reasonably adapted in good faith. Insofar as this is not economically reasonable, the supplier has the right to terminate the contract.

Insofar as required export licences are not granted or are granted under conditions with the consequence that the deliveries are not possible in the contractually intended scope, the supplier can perform partial deliveries unless the customer establishes that partial deliveries are unacceptable to them. Unacceptability exists when the customer cannot use as intended and/or cannot use otherwise the products that can be delivered without an export licence and/or for which an export licence exists. Regardless of their right to perform partial deliveries, the supplier can also terminate the contract. Insofar as the supplier exercises their right of withdrawal, they can demand compensation of futile expenses amounting to 50% of their expenses. Futile expenses of the supplier include, in particular, costs for producing products that the supplier developed and manufactured specifically for the customer so that the supplier cannot sell these products to other customers or cannot use them otherwise.

Insofar as the supplier wants to exercise their right of withdrawal, they are to declare their termination of the contract to the customer in writing.

## **Article XII: Force Majeure**

In cases of *force majeure* the supplier is exempt from their obligation of delivery for the duration and scope of the effect. A *force majeure* event is external, not related to business operations and cannot be averted even with the utmost care that can be reasonably expected. This includes, in particular, fire damage, floods, strikes, legal cordons, terror attacks, massive violent insurgency, unauthorised attacks on IT systems (hacker attack) and plagues (including epidemics and pandemics) insofar as the German Robert-Koch-Institut (RKI) set the risk level to “moderate”.

## **Article XIII: Other Claims for Damages**

1. Unless otherwise regulated in these T&Cs, customer claims for damages, regardless of the legal reason, in particular for breach of duties from the contractual obligation and from tort, are excluded.
2. This does not apply insofar as liability is assumed as follows:
  - 2.1. according to the product liability law;
  - 2.2. in the event of intent;
  - 2.3. in the event of gross negligence of owners, legal representatives or executives;
  - 2.4. in the event of fraudulent intent;
  - 2.5. in the event of non-compliance with an assumed guarantee;
  - 2.6. because of culpable injury to life, body or health; or
  - 2.7. because of culpable breach of essential contractual duties. With the exception of another of the cases mentioned above, claims for damages for breaching essential contractual duties are, however, limited to contractually typical, foreseeable damage.
3. The foregoing provisions do not bring about a change of the burden of proof to the customer’s disadvantage.

## **Article XIV: Severability Clauses**

1. If the customer is a merchant, the sole place of jurisdiction for disputes arising directly or indirectly from the contractual relationship, is the supplier’s place of business. However, the supplier is also entitled to legal actions at the customer’s place of business.
2. This contract, including its interpretation, is governed by German law under the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
3. The contract remains binding even if individual provisions become legally ineffective. This does not apply if abiding by the contract represents undue hardship for either of

the parties.

4. The German version of these T&Cs takes precedence over their English version.