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## General Terms and Conditions of Sale and Supply

### 1. Scope of application

- 1.1 All offers, sales, deliveries and services of WIRTGEN AUSTRALIA Pty Ltd. (hereinafter collectively referred to as "Supplier") are solely based on these Terms and Conditions of Sale and Supply. Conflicting or deviating terms and conditions of Customers are not recognized, even if the Supplier unconditionally supplies the Customer in awareness of the Customer's conflicting or deviating terms and conditions. Deviations from these Terms and Conditions of Sale and Supply are valid only when confirmed by the Supplier in writing.
- 1.2 These Terms and Conditions of Sale and Supply also apply to all future transactions of the same kind with the same Customer, without specific further agreement being required.
- 1.3 Supplies involving installation on site are additionally subject to the Special Terms and Conditions for Supervisor Assemblies.

### 2. Offer and conclusion of contract

- 2.1 The Supplier's offers are always subject to confirmation, unless expressly otherwise stated. Cost estimates are non-binding. Unless otherwise agreed, concepts for equipment construction (also called "designed-to-order products" or "DTO Products"), first offers or cost estimates are provided free of charge. The Supplier reserves the right to charge a reasonable fee for further concepts, offers or cost estimates as well as draft works when no supply contract comes into existence.
- 2.2 A supply contract comes into existence only upon written confirmation of the Supplier. Any changes, amendments or side agreements also require written confirmation of the Supplier.
- 2.3 Once the supply contract has come into existence the contract cannot be cancelled or deferred without the prior written consent of the Supplier, which may be given or declined in the Suppliers' sole discretion and subject to any conditions the Supplier determines.
- 2.4 If a contract is cancelled or deferred by the Customer with the consent of the Supplier, the Supplier reserves the right to charge the Customer for all loss, damage and expense sustained or incurred by the Supplier as a result of the cancellation or deferral, including without limitation holding costs, freight costs, foreign exchange and treasury costs and expenses incurred by the Supplier in assembling or preparing the Goods to the Supplier's specification.
- 2.5 The documents relating to the offer, including but not limited to illustrations, drawings, details on weight and measurements, or prepared concepts are approximations only, unless being expressly marked as binding.
- 2.6 The Supplier reserves all ownership and copyrights to illustrations, drawings, concepts, cost estimates, calculations and other documents. These must not be made available to any third party without express prior written consent of the Supplier. They are to be returned to the Supplier without undue delay on demand
  - (i) if no contract comes into existence, or
  - (ii) as soon as the order has been fully executed.

### 3. Purchase Price and Payment

- 3.1 Unless otherwise agreed, the Supplier's prices apply without packaging and unloaded "ex works". The Customer bears additional costs particularly for the assembly and start-up as well as costs for obtaining of special, regular authorizations and regular requirements. In addition, the statutory value added tax as applicable is charged.
- 3.2 Unless otherwise agreed, payments are due in full, free of costs for the Supplier, and have to be effected as follows:

DTO Products:	as specified in a separately agreed payment scheme.
Components:	Before delivery, net.
Machines:	Before delivery, net.



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- Spare parts: Before delivery, net.  
Other items: Within 14 days of the date of invoice, net.
- 3.3 Bills of exchange or cheques are always accepted only on account of performance. All discount and bill charges are to be borne by the Customer.
  - 3.4 For payments by letter of credit, the regulations issued by the ICC on "Uniform Customs and Practice for Documentary Credits" shall apply in the applicable version as amended from time to time.
  - 3.5 The Customer is not entitled to set-off, retention or reduction, unless its counterclaims are either not disputed by the Supplier or have been established by final and non-appealable judgment. The same applies also in the case of an assertion of claims based on liability for defects.
  - 3.6 If the Customer defaults on payment, the Supplier shall be entitled to claim default interest. The default interest rate for the year amounts to eight (8) percentage points above the base rate. The base rate changes per each 1 January and 1 July of a year by the percentage points by which the reference base has increased or been reduced since the last change of the base rate. The reference base is the interest rate for the most recent principal refinancing transaction of the European Central Bank before the first calendar day of the relevant half year. The Supplier may assert higher default damage when providing proof. However, the Customer is entitled to prove that the damage incurred as a result of the default in payment was lower.
  - 3.7 If the Supplier becomes aware of circumstances that call the Customer's creditworthiness into question, then all deferred claims shall immediately fall due and be payable. Furthermore, the Supplier may in such case request advance payment or provision of security.

## 4. Delivery

- 4.1 Dates (readiness for delivery, delivery, start of assembling or commissioning, or readiness for operation and others) as well as deadlines based on those are in each case separately agreed. The commencement and compliance with agreed periods requires that a Customer fulfils its cooperation obligations, in particular the timely provision of all materials, documents, permits, releases and tests to be provided by the Customer, the compliance with the agreed terms of payment, in particular payment of any payments agreed (cf. 3.2) or opening of a letter of credit by the Customer. If these requirements are not timely and properly fulfilled, the periods shall be reasonably extended, at least however by the time of the delay; this does not apply if the Supplier is solely responsible for the delay.
- 4.2 The compliance with any period is subject to the condition that the Supplier itself receives correct and timely delivery from its own suppliers provided the order was placed by the Supplier in a timely and correct manner.
- 4.3 Unless otherwise agreed, each delivery is "ex works" resp. the construction of the DTO product shall be deemed as finished at time that time the notice of readiness for operation is issued. In the internal relationship to the Supplier, the Customer assumes the Supplier's obligations under the Packaging Ordinance (VerpackV), and shall insofar indemnify the Supplier.
- 4.4 The delivery period has been complied with when the delivery item has left the Supplier's plant upon its expiry, or if readiness for delivery has been notified. For DTO products, the notification of readiness for delivery shall be substituted by the notification of readiness for operation. As far as acceptance is required, the date of acceptance shall be authoritative - except in case of justified refusal of acceptance -, alternatively the notice of readiness for delivery resp. the notice of readiness for operation for DTO products.
- 4.5 The Supplier may at any time make partial deliveries or render partial performance.
- 4.6 Delays based on force majeure and based on events that significantly obstruct delivery for the supplier or make delivery impossible, e.g. war, terrorist attacks, extensive disease outbreaks like epidemics and pandemics (e.g. Ebola, measles, SARS, MERS, Covid 19, or similar serious viral diseases, cholera, etc.), including the possible establishment of containment areas, import and export restrictions, strikes, lockouts, or official orders, even if they concern suppliers or sub-

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suppliers of the supplier (hereinafter referred to as "Force majeure cases"), extend the agreed delivery periods by the duration of the delay in delivery or performance plus a reasonable start-up period. If delivery in Force Majeure Cases is nevertheless carried out and this results in additional costs, such as higher freight costs or storage costs due to special security measures, the scarcity of means of transport, or the interruption of a delivery that has already commenced, these costs shall be borne by the customer. The supplier will inform the customer, if possible, of the start, end, and estimated duration of the aforementioned circumstances.

- 4.7 The Supplier is not in default if the Supplier provides the Customer with a replacement, in compliance with the contractual delivery dates for the time until the delivery of the actual delivery item, provided that such replacement meets the Customer's technical and functional requirements in all material aspects, and the Supplier bears all costs incurred for providing the replacement.
- 4.8 In case of a default on the part of the Supplier, the Customer shall grant the Supplier a reasonable additional period for performing the contract.
- 4.9 If the Supplier is in default, even after an appropriate grace period, and the Customer as a consequence suffers any damage, the Customer shall be entitled to request lump sum default compensation. Such compensation shall amount to 0.5% for each full week of delay, but in total to maximum 5% (3% in case of a DTO Product) of the value of that part of the entire performance on the base of the net price ex works without any transport, assembling or other additional costs, which cannot be used in time or according to contract due to the delay. Any additional claim for damages based on default shall be excluded.

If in consideration of the statutory exceptions the Customer twice grants the defaulting Supplier a reasonable period for performance, and if the last period granted is not complied with, then the Customer shall be entitled to withdraw from the contract within the scope of the statutory regulations.

**5. Passing of risk, transport, default of acceptance, Readiness for Operation**

- 5.1 The risk passes to the Customer when the delivery item has been provided for collection or, in case of a DTO product, the Supplier notifies the Customer about the readiness for operation (cf. clause 4.3), also in case that partial deliveries are made or the Supplier has additionally agreed to other performance, e.g. payment of the shipping costs, or delivery and installation. Insofar as acceptance is required, it shall be authoritative for the passing of risk. It must be performed without undue delay on the date of acceptance, alternatively after the Supplier has notified the readiness for acceptance. The Customer is not entitled to refuse acceptance in the event of a minor defect. If the Customer does not declare acceptance even though no defect is given or an only minor defect exists, then acceptance shall be deemed declared after the expiry of a period of one month after notification of the readiness for acceptance, but at the latest six months after the consignment has left the plant ("ex works"). In case of the delivery and assembly of a DTO product the acceptance shall be substituted by the notification of operation.
- 5.2 If dispatch is delayed or omitted due to circumstances not attributable to the Supplier, the risk shall pass to the Customer as from the day of notification of readiness for delivery or acceptance resp. for operation.
- 5.3 Unless otherwise agreed, the delivery items are transported at the Customer's expense and risk.
- 5.4 At the Customer's request and expense, the Supplier will insure the consignment against risks of transport.
- 5.5 If the Customer is in default of acceptance or violates any other cooperation obligations, then the Supplier shall be entitled to request compensation for the damage incurred, including any additional expenses, in particular the costs incurred by the delayed acceptance of delivery resp. by the delayed start of assembling and commissioning or readiness for operation.
- 5.6 As far as any commercial clauses such as FOB, CFR, CIF, etc. are used, these shall be construed according to the applicable Incoterms of the ICC as amended from time to time.

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- 6.1 The Supplier retains title to the delivery item until all of the Supplier's claims against the Customer under the business relationship, including any future claims, also from simultaneously or later concluded contracts, have been settled. This also applies if individual or all claims of the Supplier were taken into current account and the balance has been drawn up and acknowledged. In the event of any breach of contract on the part of the Customer, in particular in the event of default in payment, the Supplier shall after reminder be entitled to take back the delivery item with simultaneous declaration of withdrawal, and the Customer shall be obliged to surrender such item.
- 6.2 The Customer is entitled to dispose of the delivery items in the ordinary course of business if and for as long as the conditions on securing the Supplier's claims against the Customer as set forth in clauses 6.3, 6.4 and 6.5 have been fulfilled. Any breach of the obligation stipulated in the foregoing sentence entitles the Supplier to immediate termination of the entire business relationship with the Customer.
- 6.3 It is hereby agreed between the Supplier and the Customer that upon the conclusion of a supply contract all claims of the Customer under the future resale or letting of the delivered items to a third party or on any other legal ground (insurance, tort, etc.) shall pass to the Supplier for securing all claims of the Supplier under the business relationship with the Customer. Insofar, the Customer already here and now fully assigns to the Supplier all and any claims including ancillary rights to which the Customer is entitled under the resale or letting of the delivered items. The Supplier already here and now accepts such assignment. However, the Customer shall be entitled to collect the assigned claim until the Supplier requests disclosure of the assignment. The Customer is prohibited from again assigning the claims already assigned to the Supplier. The Customer is obliged to transfer title or any other right to any items, machinery parts and used machines of any kind accepted in lieu of payment within the scope of the resale to the Supplier at the very moment when the Customer acquires title or other rights thereto. The Customer shall without charge store, carefully treat and reasonably insure the aforementioned items on behalf of the Supplier (see 6.7).
- 6.4 If the securities specified in clauses 6.1, 6.2 and 6.3 are not recognized or not unrestrictedly enforceable under the laws of the country in which the delivery items are located, then the Customer already here and now undertakes to cooperate in all steps required (in particular in connection with any registration or notification obligations, etc.), especially to give the necessary declarations, to enable provision of the securities in compliance with applicable law. The Supplier is entitled to retain the delivery items until the required securities have been provided with legal effect. If in consideration of the statutory requirements the provision of the securities is not locally enforceable or cannot be realised for any other reasons, the Customer already here and now undertakes to offer the Supplier equivalent securities. The Customer is obliged to inform the Supplier of any form requirements or other statutory requirements that conflict with the provision of the security according to clauses 6.1, 6.2 and 6.3, without request and without undue delay upon or after the conclusion of the contract.
- 6.5 The processing or alteration of retained items through the Customer shall always be carried out on behalf of the Supplier. If the retained item is processed together with other items which do not belong to the Supplier, the Supplier shall acquire co-ownership in the new item in proportion of the value of the retained item to the other processed items at the time of processing.
- If goods are connected or inseparably mixed by the Customer with other movable items to one unitary item, and if the other item is to be seen as main constituent, then the Customer shall transfer to the Supplier the proportionate co-ownership to the extent that the main constituent belongs to it.
- The Customer holds the ownership or co-ownership in custody for the Supplier, without charge. Besides, the item created by processing or alteration is subject to the same provisions as the retained goods.

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- 6.6 If the value of the securities provided according to clauses 6.1 to 6.5 exceeds the Supplier's claims under the business relationship with the Customer by more than 10%, the Supplier shall upon request of the Customer release any exceeding securities, at its choice.
- 6.7 For the event that
- Due to the retention of title the delivery item has not yet fully passed into the Customer's ownership,
  - due to a separate agreement diverging from clause 3.2 the delivery item is paid in part or in full only after delivery (e.g. by payment in instalments, deferment, extended term of payment agreed in advance or subsequently, etc.),
  - the delivery item (e.g. delivery "for trial", "for approval" or the like) or a replacement device (e.g. "as an interim measure" and the like) was provided to the Customer against payment ("under lease" or the like) or free of charge already before the conclusion of a purchase contract or for any other reason,
- the Customer undertakes to take out an insurance, ex works, at replacement value, including all ancillary costs, covering all risks including fire, damage by the elements, vandalism, theft, transport, improper handling, user errors, accident, etc., and to maintain such insurance, depending on the individual case, until full transfer of title, until full payment, until return of or final takeover of the delivery item and the replacement device to the Supplier and the Customer, respectively (machinery insurance). The Customer furthermore undertakes to insure the operational risk involved in the delivered item for the same period, at its own expense (liability insurance). The Customer undertakes to submit corresponding proof to the Supplier before the provision of the delivery item, i.e. upon delivery ex works (clause 4.3). The Supplier is entitled to refuse to deliver the goods until corresponding proof has been submitted. The Supplier is furthermore entitled to insure the delivery item itself and to charge any costs on the Customer. The Customer already here and now assigns its current and future rights and claims against its insurer under the insurance relationship to the Supplier. The Supplier hereby accepts such assignment. The rights become extinct at the point of time when the goods ultimately pass into the ownership of the Customer, and the purchase price has been fully paid.
- 6.8 In case of attachments, seizures or other access by third parties to items or claims to which the Supplier has security rights, the Customer shall without undue delay notify the Supplier and provide support in the assertion of the Supplier's rights. The costs of any judicial or extrajudicial interventions are to be borne by the Customer, as far as no reimbursement can be obtained from the third party.
- 6.9 The petition for the opening of insolvency proceedings against the Customer's assets entitles the Supplier to withdraw from the contract with immediate effect and to request immediate return of the delivery item.
- 6.10 Clauses 6.1 sentence 3 and 6.9 apply analogously for the items, machinery parts and used machines of any kind which the Customer may have accepted in lieu of payment according to clause 6.3.
- 6.11 The Supplier may, at any time, lodge and/or register documents to reflect and recognise the Supplier's interests in any items as described in this clause 6 and the Customer irrevocably authorises the Supplier to lodge and/or register such documents and consents to such lodgements and/or registrations.
- 6.12 The Customer agrees to, whenever requested by the Supplier to do so, execute all documents and do all such further acts and things as may be required by the Supplier to enable lodgements and/or registrations to reflect and recognise the Supplier's interests described in this clause 6 and to enforce any of the Supplier's rights under any such lodgements and/or registrations.
- 6.13 The Customer agrees to pay any costs and expenses incurred by the Supplier in lodging and/or registering documents pursuant to this clause 6.
- 6.14 Without limiting the foregoing the parties acknowledge and agree

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- 6.14.1 that these Terms of Sale and Supply constitute a security interest for the purposes of the Personal Properties Securities Act 1991 ("PPSA"):
  - 6.14.1.1 in all goods supplied from the Supplier to the Customer from time to time and all proceeds derived from those goods.
  - 6.14.1.2 as security for payment by the Customer of all amounts due under the Supply, including any future amounts.
- 6.14.2 that any of the goods or proceeds of sale of the goods coming into existence after the date of these Terms of Trade will come into existence subject to the security interest granted herein and the terms of these Terms of Trade without the need for any further action or agreement by any party; and
- 6.14.3 the security interest has attached to all goods supplied by the Supplier now or in the future to the customer and that the attachment of the security has in no way been deferred or postponed from the date recorded herein.
- 6.14.4 The Customer waives the right to receive a verification statement in respect of any financing statement or financing change statement pursuant to s148 of the PPSA.
- 6.14.5 The Customer agrees:
  - 6.14.5.1 to promptly execute and deliver to the Supplier all assignments transfers and other agreements and documents and do anything else which the Supplier may deem appropriate to perfect the Company's security interest in any Products, or obtain the priority required by the Supplier or register (and renew registration) a financing statement for a security interest in favour of the Supplier in the Goods.
  - 6.14.5.2 not to register a financing change statement or a change demand in respect of the Goods without the prior written consent of the Supplier.
  - 6.14.5.3 not to allow any person to register a financing statement over any of the goods supplied by the Supplier without its prior written consent and will immediately notify the Supplier if the customer becomes aware of any person taking steps to register a financing statement in relation to such goods.
  - 6.14.5.4 to give the Supplier not less than 14 days prior written notice of any proposed change in your name and/or any other change in your details including, but not limited to, changes in your address, facsimile number, trading name or business practice.
  - 6.14.5.5 to immediately advise the supplier of any material change in the Owner's business practices of selling the goods which would result in a change in the nature of the proceeds derived from such sales.
  - 6.14.5.6 to indemnify, and upon demand reimburse the Supplier for all costs of registration or release or otherwise related to the exercise or enforcement of its rights under these terms.
- 6.14.6 The customer irrevocably grants to the Supplier and its agents the right to enter upon the customer's property or premises, without notice, and without being in any way liable to the customer or to any third party, if the Supplier has cause to exercise any of its rights under section 109 of the PPSA, and the customer shall indemnify the Supplier from any claims made by any third party as a result of such exercise.
- 6.14.7 To the extent that Part 9 of the PPSA applies the Customer agrees that the provisions of sections 114(1)(a), 117(1)(c), 120(2), 122, 133 and 134 of the PPSA which are for the Customers benefit or place any obligations on the Supplier in the Customers favour,

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shall not apply; and where the Supplier has rights in addition to those in Part 9 of the PPSA those rights shall continue to apply.

- 6.14.8 To the extent that Part 9 of the PPSA applies, without limiting anything in the previous paragraph, the Customer hereby waives its rights under sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA

6.15 Nothing in this clause 6 affects the right of the Supplier to receive a notice, document or amount which it is entitled to receive under these terms and conditions or any other contract with the Customer.

**7. Liability for Defects**

7.1 Upon existence of a defect in quality within the limitation period, which was caused already at the time risk passed, the Supplier may at its choice either remove the defect as subsequent performance or deliver a faultless item. The defect is removed either by replacement or repair of the defective item at the Supplier, unless the Parties expressly or implicitly (e.g. by uncontradicted performance on site) agree otherwise. Replaced parts pass to the ownership of the Supplier; the provisions set forth in clause 6 apply analogously.

7.2 Any assertion of claims based on liability for defects by the Customer requires that the Customer examines the delivery items for defects without undue delay, at the latest within one week of delivery and notifies the Supplier without undue delay in writing if any defect is discovered. Defects which cannot be discovered within this period even upon careful inspection have to be notified to the Supplier without undue delay after discovery. Delivery within the meaning of sentence 1 of this provision is the point in time when the Customer gains actual control over the delivery item or could have gained such control without the Customer's fault.

7.3 Changes to the construction or design made before the delivery of an ordered item within the scope of a general change in construction or production at the Supplier are not considered as defect of the delivery item as far as they do not render the delivery item unusable for the purpose intended by the Customer.

7.4 If the removal of the defect fails, the Customer will have to grant the Supplier a reasonable additional period for further subsequent improvement or replacement. If the subsequent improvement again fails, the Customer may request reduction of the purchase price by the amount by which the value of the delivery item is reduced due to the defect, or may at its choice withdraw from the contract. If only a minor defect exists, the Customer will only be entitled to reduce the contract price.

7.5 The Customer has to grant the Supplier or any third party commissioned by the Supplier the time and opportunity required for carrying out the works under its liability for defects (subsequent improvement or replacement), upon prior consultation. As far as the Supplier is obliged to remove a defect, the Customer may itself remove such defect, or have such defect removed by a third party, only if this is necessary to avert imminent dangers to operational safety or to prevent disproportionately high damage and if the Customer has obtained the Supplier's prior consent.

7.6 The Supplier's warranty does not extend to any consequential costs arising from the removal of the defect.

As far as a defect has been caused by a part which the Supplier purchased from a third party as supplier for its products, the Supplier already here and now assigns its claims under the delivery of such purchased part or under corresponding third party performance contracts to the Customer. The liability for defects is insofar limited. If the Customer does not receive any adequate compensation under the assigned right, the Supplier shall be subsidiarily liable until the expiry of the warranty period according to the regulations of these General Terms and Conditions.

7.7 Defects are not classified as defects in quality in case of

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- natural wear and tear;
  - unsuitable or improper use;
  - defective installation, bad civil works or start-up by the Customer or third parties;
  - improper, incorrect or careless treatment;
  - improper storage, putting up or bad building area;
  - ignorance of the relevant user manuals;
  - use of unsuitable means of operation;
  - use of unsuitable replacement materials and parts;
  - chemical, electro-chemical, electro-magnetic, electrical or comparable influences;
  - changes to the delivery item by the Customer (or any third party commissioned by the Customer), unless there is no causal relation between the defect in quality and the change;
  - installation of components and spare parts, expendable parts or other parts as well as lubricants not originating from the manufacturer (so-called OEM products), unless there is no causal relation between the defect in quality and the installed part;
  - lack of or improper maintenance by the Customer or third parties, as far as these are not authorised by the manufacturer to maintain the machines or DTO Products.
- 7.8 As far as the scope of delivery includes software, the liability for defects does not include the removal of software errors and errors caused by improper use, user error, natural wear and tear, inadequate system environment, operational conditions other than those listed in the specifications, and insufficient maintenance.
- 7.9 The Customer shall without undue delay notify the Supplier of any software defects in writing and in a comprehensible and detailed form, stating all information expedient for identifying and analysing the defects. In particular, the manifestation and the consequences of the software defect need to be stated.
- 7.10 Claims for defects in quality and defects in title become statute-barred in 12 months. The limitation period commences upon the passing of risk according to clause 5.
- 7.11 The provisions contained in this clause 7 conclusively regulate the liability for defects for the items delivered by the Supplier. Any further claims of the Customer, in particular for any damage not affecting the delivery item itself, are exclusively subject to clause 8.
- 7.12 With regard to used machines, any liability for defects in quality is expressly excluded.

**8. Liability**

- 8.1 The Supplier is liable in case of wilful conduct and gross negligence, culpable injury to body, life and health, defects fraudulently undisclosed by the Supplier or defects for which the Supplier gave a quality guarantee. The Supplier has unlimited liability within the scope of product liability and based on other mandatory statutory regulations.
- In the event of culpable breach of any material contractual obligations, the Supplier will also be liable in the case of simple negligence, but liability is limited to 10% of the respective order value. If this limitation is not permissible on legal grounds, liability will in the case of simple negligence be limited to damage typical for the contract and reasonably foreseeable upon conclusion of the contract. Material contractual obligations in this sense shall either mean concretely described material obligations the violation of which jeopardises the achievement of the contractual purpose, or abstractly the obligations which constitute conditions sine qua non for proper performance of the contract, and on the fulfilment of which the Customer may regularly rely.
- 8.2 It is pointed out to the Customer that data backup is required before the installation and continuously during the use of a software. In case of any loss of data, the Supplier will be liable only for the expense and effort required for recovery of the data when these were properly secured by the Customer.
- 8.3 Further liability for damages, in particular financial damage, is excluded.  
Any and all liability for consequential damage, in particular lost profit, is excluded.



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- 8.4 The foregoing limitations of liability apply in terms of cause and amount also in case of any claims for damages of the Customer against the Supplier's legal representatives, employees or vicarious agents.
- 8.5 The main liability limitations apply after reason and height also for the violation of contractual secondary obligations, particularly for the violation of consulting and clarification obligations before and after contract closing.

**9. Rights to software / data protection**

- 9.1 As far as the scope of delivery includes software, the Customer is granted a non-exclusive right to use the delivered software, including its documentation, for application on the relevant delivery item. Using the software in more than one system is prohibited.
- 9.2 The Customer must not reproduce, revise or translate the software or convert the object code into the source code, except in cases, where these measurements are exceptionally granted contractually or permitted by law. The Customer undertakes not to remove or change any manufacturer information, in particular copyright notes, without the Supplier's express prior approval.
- 9.3 All other rights to the software and the documentations, including copies thereof, remain with the Supplier or software provider. The granting of sub-licences or any passing on to third parties in any other form is prohibited.
- 9.4 The Supplier is not liable for software already installed or installed in the future (including as an upgrade or update) if the Customer uses the software improperly. Any improper handling or use is in particular given if the Customer or a third party
- deletes, changes or otherwise influences any parameters of the supplied item without written consent of the Supplier, so that the functionality of the machine can be impaired;
  - installs a software (including as an upgrade or update) not authorised by the Supplier for the respective type of machine or DTO product acquired by the Customer; and
  - installs a software (including as an upgrade and update) without putting the machine completely out of operation during the entire installation, upgrade or update process, without observing the machine and continuously monitoring its behaviour, and without keeping persons at a distance.
- The Customer must strictly comply with these safety measures.
- 9.5 In addition, the limitations of liability set forth in clauses 7 and 8 apply. If a software is let only for a limited period of time, then liability shall be limited to the removal of defects according to clause 7 during the time of letting. As far as such removal fails, the Customer will in case of a fixed-time letting of a software - as far as a separate rent was charged on the software - be entitled to termination for good cause and - as far as the defect impairs the suitability of the software or the product not only insubstantially - have the right to reduce the agreed rent.
- 9.6 As far as the Customer has acquired a particular software within the scope of buying a machine, DTO product or components or separately (e.g. in connection with a web-based fleet management system like WITOS, etc.), the performance is subject to accessible network technologies and technical and geographical circumstances at place of operation. The Supplier does not take over any guarantee or liability for any interruptions caused by the network provider (e.g. in case of regularly required maintenance) or other limitation of telecommunication services or even shutdown of an outdated network technology (e.g. G2). In case of doubt, clauses 7.6 and 8.3 apply accordingly. In case, machine data (e.g. on ongoing operations, standby times, etc.) are stored and transmitted to the Supplier, the Supplier shall be entitled to analyse, process and without restriction use such data without charge for internal purposes, unless the Customer expressly objects. Any disclosure to third parties, e.g. for purposes of reference and comparison, shall be permissible if done in anonymous form, or if the Customer upon request expressly consents to the disclosure.
- 9.7 For the case that personal data are stored within the scope of installation, upgrade or update, the following shall apply:

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The Supplier represents compliance with the statutory data protection regulations. In particular, as far as this is required for installing software, any provided personal data will not be disclosed to any third party; rather, such personal data will be storage, processed and used exclusively internally for performing the contract. They are deleted when no longer needed. If any statutory retention periods conflict with deletion the data shall be blocked instead of deleted in accordance with the applicable statutory regulations.

If statutory data protection regulations so require, the Customer shall prior to the conclusion of the respective contract obtain the necessary written consent of the person whose personal data are required for performing the contract.

**10. Proprietary rights of third parties**

- 10.1 The Supplier shall be liable for any infringement of third party rights by its product/service only as far as such product/service is used according to the contract. The Supplier shall be liable for infringements of third party rights only at the place of contractual use of the product/service (place of delivery). Claims for defects in title do not exist as far as only an insignificant deviation of the Supplier's product/service from the contractual quality is concerned.
- 10.2 If any third party asserts claims against the Customer for infringement of its rights by the Supplier's product/service, the Customer shall notify the Supplier without undue delay. The Supplier is entitled, without being obliged, to contest the asserted claims at its own expense, as far as permissible. The Customer is not entitled to acknowledge any third party claims before having given the Supplier reasonable opportunity to avert the rights of third parties otherwise.
- 10.3 If such claims have been asserted, the Supplier may at its own expense acquire a right of use or change the software (licence programs) or exchange it for an equivalent product or - if the Supplier cannot achieve any remedy at reasonable expense and effort - take back the product/service and reimburse the purchase price or fee paid by the Customer, with deduction of a reasonable compensation for use. The Customer's interests shall in this respect be adequately considered.
- 10.4 With regard to any claims for damages and reimbursement of expenses, clause 8 shall additionally apply.

**11. Export control**

- 11.1 Any delivery under this contract is subject to the proviso that performance does not conflict with any national or international export control regulations, for example embargoes or other sanctions. The Customer undertakes to provide all information and documents required for the export or transfer. Delays due to export examinations or permission procedures shall set aside any time limits and delivery periods. If necessary permissions are not granted, or if the delivery and service is not capable of being permitted, the contract shall be deemed as not concluded with regard to the parts of it that are concerned.
- 11.2 The Supplier is entitled to terminate the contract without notice if termination on the part of the Supplier is required for compliance with national or international legal regulations.
- 11.3 In the event of a termination according to clause 11.2, the assertion of any claim for damages or the assertion of other rights by the Customer based on the termination shall be excluded.
- 11.4 The Customer must upon passing on any goods delivered by the Supplier to third parties at home and abroad comply with the relevant applicable regulations of national and international export control law.

**12. Applicable law, place of jurisdiction, severability clause**

- 12.1 The contractual relationship between the Supplier and the Customer is exclusively subject to the laws of the country in which the Supplier has its registered office. The provisions of the UN Convention on the International Sale of Goods (CISG) shall not apply.



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- 12.2 Exclusive place of jurisdiction for all disputes arising from the contractual relationship between the Supplier and the Customer, including claims arising from bills of exchange and cheques, shall be the court competent for the Supplier's principal place of business. However, the Supplier shall at its choice also be entitled to bring legal action against the Customer at the latter's general place of jurisdiction.
- 12.3 If one or several provisions or parts of any provision of these Terms and Conditions of Sale and Supply are or become invalid for any reason whatsoever, this shall not affect the validity of the remaining provisions. The Customer and the Supplier undertake to replace the invalid provisions or partial provisions by such regulations which are legally permissible and which in economic terms correspond most closely to the original regulation. This analogously applies in the event of any unintended gap.

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