

General Terms and conditions

1. All goods are sold, and services provided subject to the following terms and conditions unless modified in writing and signed by one or more of the directors of WIRTGEN SOUTH AFRICA (Pty) Limited (hereinafter collectively referred to as "Wirtgen"). Without prejudice to the foregoing provisions the Customers or Dealers acceptance of the delivery of the goods or services shall constitute acceptance by Customer or Dealer of these terms and conditions.
2. These terms and conditions of goods sold, and services provided also apply to all future transactions of the same kind with the same Customer or Dealer, without specific further agreement being required.
3. The payment terms for payment are **invoiced amount(s) due nett strictly on or before the last date of the following month of the invoice date (for example if the invoice was issued on 7 October the amount due would be payable on 30 November)**
4. All prices are subject to change without prior notice.
5. Any discount offered or allowed by Wirtgen to the Customer or Dealer is always subject to payment within payment terms as described in clause 3, failing which any discount agreed falls away.
6. The Customer agrees to pay interest on all overdue accounts and or default payments at the rate of **PRIME PLUS 3% (Three percent) from date of due payment as described in clause 3.** The Dealer agrees to pay interest on all overdue accounts and or default payments at the rate of **PRIME PLUS 5% (Five percent) from date of due payment as described in clause 3.** The Customer or Dealer also agrees that a certificate issued by a director of Wirtgen setting out the applicable rate and amount of interest, as also verifying any amounts owing by me/us, shall be good and sufficient proof of the content thereof for all purposes, including any application for judgement or summary judgement in any competent court or in respect of any collection charges by our appointed representative.
7. The Customer or Dealer hereby agrees that the Customer or Dealer shall not be entitled to withhold payment of Wirtgen's account for any reason whatsoever.
8. The Customer or Dealer agrees that neither WIRTGEN nor any of its employees will be liable for any negligent or innocent misrepresentations made to the Customer or Dealer nor shall the Customer or Dealer be entitled to resile from any contract on those grounds. It is the sole responsibility of the Customer or Dealer to determine that the goods or services ordered are suitable for the purpose of intended use.
9. All orders and variations are subject to these terms and conditions or other written Wirtgen agreement. Only written orders and variations will be accepted by WIRTGEN. This notwithstanding, WIRTGEN may, at its sole discretion, elect to accept and act upon telephonic orders and any variations to orders. WIRTGEN however reserves the right to refuse delivery of any order until placed in possession of a written order form that Wirtgen accepts in writing.
10. The Customer or Dealer hereby confirms that the goods and services on the tax invoice read together with a quotation issued duly represent the goods and services ordered by the Customer or Dealer at the prices agreed to by the Customer or Dealer and where performance / delivery has already taken place that the services and goods were inspected and that the Customer or Dealer is satisfied that these conform in all respects to the quality and quantity ordered and are free from any defects.
11. The delivery dates agreed to are given in good faith and all reasonable effort will be made to comply with them, but they shall be treated as approximate only and shall not be made the essence of the contract.
12. If the Customers or Dealers order incorporates other conditions such terms and conditions shall not take effect unless WIRTGEN expressly agrees thereto in writing, signed by one or more of the directors of WIRTGEN.
13. WIRTGEN reserves its right to alter prices up to the time goods are dispatched, or services rendered by WIRTGEN.
14. The Customers or Dealer's order is accepted subject to the Customer or Dealers new account, or deferred payment being approved by WIRTGEN or to satisfactory security for payment being given.
15. If WIRTGEN cannot deliver some or all of the goods or services for any reason beyond its control, including but not limited to lack of instruction from the Customer or Dealer, stock shortage, industrial dispute or breakdown, serious health risks (e.g. Covid 19), government action, state of war, riot, or civil disturbance, WIRTGEN may, in its discretion, cancel the whole or any part of the agreement forthwith. In the event of such cancellation WIRTGEN shall not be liable for any loss (including loss of profits) thereby caused.
16. All sizes, weights and other specifications given by WIRTGEN are approximate only. WIRTGEN reserves the right to supply goods or services that do not exactly correspond with what WIRTGEN

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- agreed to supply provided that any differences do not make the goods or services unsuitable for the Customer or Dealers declared purposes.
17. The Customer or Dealer must satisfy itself that the goods and services are fit for the Customer or Dealers purpose as WIRTGEN does not guarantee this. Subject only to the provisions of Clauses 8,10 the goods are sold, and services are rendered, free of any representation and all warranties express or implied are hereby excluded
 18. Technical and operational information regarding weight, dimensions and other performance and consumption data in our brochures, drawings and publications are for general information purposes only unless specific reference is made thereto in our quote.
 19. Unless WIRTGEN agrees otherwise in writing:
 - a. the ownership of goods shall not pass to the Customer or Dealer until payment is made in full;
 - b. the risk in goods shall pass to the Customer or Dealer on delivery (or collection, as the case may be) when a delivery note is issued to the Customer or Dealer.
 - c. The Customer or Dealer warrants that, until ownership passes to it in terms of this Agreement, it shall keep the equipment and or goods free and clear of all liens and encumbrances and shall not sell, transfer, sub-lease, charge, assign by way of security or otherwise deal in or encumber the goods(equipment) and the documentation without written approval by Wirtgen. The Customer or Dealer shall exercise the utmost good faith in its care of the goods (equipment.)
 - d. The above clause B does not apply if the Customer or Dealer or the person the Customer or Dealer choose to receive the goods, refuse to accept delivery of the goods or delays delivery or collection. In this instance the risk in the goods will pass to the Customer or Dealer from the day that delivery or collection should have taken place.
 - e. WIRTGEN shall deliver all goods on an Ex-Works basis and the cost to deliver the goods to the Customer or Dealer premises, including shipping, taxes and clearing charges are at the Customer or Dealer cost except where other written arrangements has been made.
 20. Transfer of ownership of the goods does not constitute:
 - a. transfer of any intellectual property in, or relating to, such goods to the Customer or Dealer; or
 - b. the grant of a license to the Customer or Dealer to manufacture or produce the same or similar goods.
 21. At WIRTGEN option and subject to standard warranty conditions:
 - a. WIRTGEN shall accept for replacement or repair free of charge any goods which have a defect in materials or manufacture provided WIRTGEN is advised thereof in writing within 7 (Seven) days from the date of delivery of any such goods provided any such goods are returned to our works carriage paid. WIRTGEN shall in its discretion reimburse the Customer or Dealer for the cost of carriage should WIRTGEN consider this appropriate.
 - b. WIRTGEN shall have the sole right to determine whether any goods returned to WIRTGEN has a defect in manufacture, materials or not.
 22. WIRTGEN shall not be liable for damage in transit if it was agreed that Wirtgen deliver the goods in writing or for shortage unless a claim in writing is received by WIRTGEN within 3 (Three) days of delivery.
 23. Time shall not be of the essence of the contract.
 24. No agreement on the part of WIRTGEN to deliver goods to a place of the Customer or Dealers choosing will involve an undertaking to provide for the unloading of products or for the reimbursements of the cost of unloading.
 25. Should the Customer or Dealer's order require abnormal packing, this will be carried out at the Customer or Dealers cost.
 26. WIRTGEN is at liberty to employ sub-contractors on all or any part of the Customer or Dealer's order, which costs the Customer or Dealer will be liable for.
 27. The Customer or Dealer must insure the goods to which WIRTGEN has retained ownership and or title against for their full replacement value including but not limited to theft, breakage, fire, water and other risks ordinary insured against in all risk and transportation policy. WIRTGEN may require the Customer or Dealer to prove that a suitable insurance policy has been taken out, and may, if necessary, take out insurance against the abovementioned risks itself at the expense of the Customer or Dealer.
 28. Every effort is made to meet known statutory requirements and to avoid infringement of patents or trademarks belonging to third parties. Nevertheless, WIRTGEN does not warrant that the goods supplied, or services rendered under the contract comply with all relevant statutes, ordinances, regulations and by laws, or that the sale or use of the goods or services by the Customer or Dealer will not infringe any patent, trade mark, trade name or registered design.
 29. WIRTGEN reserves the right to search any of the Customer or Dealers vehicles before they enter or leave WIRTGEN premises, and in addition reserve the right to search the Customer or Dealer



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- personnel or those employed by the Customer or Dealer as sub-contractors before they enter or leave the premises. The Customer or Dealer shall ensure that the Customer or Dealers employees and the employees of the Customer or Dealers sub-contractors are aware of this provision.
30. In relation to the performance of this Agreement, Wirtgen may have access to and may use information that identifies employees, contractors, Customer or Dealers or suppliers of the Customer or Dealer (hereinafter "**Personal Data**"). The Parties agree that any and all Personal Data provided to Wirtgen by the Customer or Dealer or collected by Wirtgen on behalf of the Customer or Dealer shall only be used for the purposes connected to the performance of this Agreement, including but not limited to carrying out the commercial transactions between the Parties. Wirtgen may carry out the processing of Personal Data on behalf of the Customer or Dealer or on its own behalf and shall:
- take all such technical and organizational security measures to protect Personal Data against unlawful use or disclosure; and
 - maintain Personal Data in confidence without disclosing same to third parties outside the Customer or Dealer group of companies, in strict accordance with Data Protection Legislation.
31. WIRTGEN shall not be liable in contract or delict or otherwise for any loss (including consequential loss) or injury arising from the supply of goods, or the rendering of services, including any loss attributable to any negligent act of WIRTGEN or its servants or agents.
32. The Customer or Dealer hereby indemnifies and holds Wirtgen harmless against any and all costs, losses, damages, expenses and/or charges which the Customer or Dealer may suffer or incur arising out of the supply of goods or services or work to be performed by Wirtgen, including (without limitation), such liability arising from:
- any injury to person or damage to property attributable to any act or omission on the part of Wirtgen, its employees, agents, subcontractors or nominees;
 - any claims, loss, liability or damage caused by breach of this Agreement by Wirtgen;
 - any damage or claims of any nature, whatsoever, arising out of any of the infringement of the Intellectual Property or any other rights protecting the supply or use of any failure of Wirtgen.
33. Customer or Dealer agree that in the event of a dispute arising from this agreement:
- Wirtgen will have the option to have the dispute arbitrated by an arbitrator appointed either by agreement or by the President of the Association of Arbitration in accordance with the provisions of the Arbitration Act.
 - That in any court action arising from this agreement, Customer or Dealer agree and consent (in terms of Section 45 of the Magistrates Court Act 32 of 1944 as amended) that Wirtgen may at Wirtgen discretion, institute such action in the jurisdiction of the relevant Magistrates Court, notwithstanding that the amount of the claim may exceed such jurisdiction.
 - The Customer or Dealer further agree that this constitutes a consent in writing to the jurisdiction of the Magistrates Court as contemplated by the Magistrates Court Act No. 32 of 1944 as amended.
34. Wirtgen has the right to terminate this Agreement or any order if any of the following occur:
- Terms: If the Customer or Dealer does not obey or adhere to (comply) any terms in this Agreement, this will mean that the Customer or Dealer is breaking this Agreement and, in legal terms, will be in breach of this Agreement.
 - Dishonesty: If the Customer or Dealer makes untrue or misleading statements to us in the Application Form or at any other stage.
 - Unpaid Judgment: If the Customer or Dealer does not pay any judgment that has been made against the Customer or Dealer after 7 days or more.
 - Sequestration: If the Customer or Dealer is sequestered or liquidated, become insolvent or compromise with any of the Customer or Dealers creditors.
 - Deregistration: If the Customer or Dealer takes steps to deregister or if someone takes action for the Customer or Dealer to deregister.
 - Financial Distress or Business Rescue: If the Customer or Dealer becomes Financially Distressed.
 - any judgment is given against the Customer or Dealer in any court of law and, if appealable, is not appealed against within the period allowed for the lodging of such an appeal or, if not subject to an appeal, remains unsatisfied for a period of 10 (ten) days
35. If the Customer or Dealer is in breach of this Agreement Wirtgen can take various steps against the Customer or Dealer. These steps are in addition and do not take away from any of our rights that we have by law or according to this Agreement. These steps include one or more of the following:
- Suspension: Wirtgen can suspend any or all of the Customer or Dealers' orders.
 - Cancellation: Wirtgen can cancel any or all of the Customer or Dealers' orders. Wirtgen can even cancel this Agreement.
 - Refusal: Wirtgen can refuse to accept any or all of the Customer or Dealers new orders.
 - Withdrawal: Wirtgen can take away any agreed discount, incentive or rebate.
 - Set Off: Wirtgen can set off the amount of any agreed discount, incentive or rebate against any payment that the Customer or Dealer still owns Wirtgen.

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- f) Repossession: Wirtgen can go into the Customer or Dealer premises and take back any goods that Wirtgen still own or where ownership has not passed to the Customer or Dealer in terms of what it says under "Ownership and Risk"
 - g) Damages: Wirtgen can claim from the Customer or Dealer any damages that Wirtgen may have suffered.
36. If The Customer or Dealer breach the terms of this Agreement, then the following applies:
- a) Remedy: If the Customer or Dealer can fix the breach, Wirtgen will give the Customer or Dealer 7 days written notice to remedy the Customer or Dealer breach. If the Customer or Dealer does not fix the breach within these 7 days, then Wirtgen can take any of the steps outlined above. If the Customer or Dealer cannot fix the breach, then Wirtgen do not need to give the Customer or Dealer notice to remedy the Customer or Dealer breach.
 - b) If Wirtgen breach any material term of this Agreement, then the following applies:
 - c) Remedy: The Customer or Dealer can give us 14 days written notice to correct Wirtgen breach. If Wirtgen does not correct our breach within 14 days, the Customer or Dealer may cancel this Agreement or any pending Orders.
37. Any delivery under these terms and conditions 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 or Dealer 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.
38. In the event of any default by the Customer or Dealer of any provision of this agreement, the Customer or Dealer hereby consents and authorises WIRTGEN to furnish the name, credit record and repayment history of the Customer or Dealer to any credit bureau as a delinquent debtor.
39. The Customer or Dealer must upon passing on any goods delivered by Wrtgen to third parties at home and abroad comply with the relevant applicable regulations of national and international export control law.
40. Customer or Dealer undertake to pay all legal costs incurred in connection with the recovery of any account due by me/us, including all collection charges from time to time, tracing fees and costs as between attorney and client which may be payable in respect of the collection of such account.
41. The Customer or Dealer agrees that the physical trading address given shall be my/our domicilium citandi et executandi for all purposes under this agreement and or the Customer or Dealer registered address, whether in respect of court process, notices or other documents or communications of whatever nature.
42. The Customer or Dealer undertake to notify Wirtgen within seven (7) days of any change of address/detail.
43. This Agreement represents the whole agreement between Wirtgen and the Customer or Dealer.
44. No changes, deletions, additions or cancellation of this Agreement will be binding unless they are in writing and signed by Wirtgen and the Customer or Dealer.
45. No leniency in terms of this Agreement by either party will prejudice or abandon any of that party's rights under this Agreement.
46. The Customer or Dealer may not transfer the Customer or Dealer rights, duties, or both, under this Agreement to any third party without Wirtgen prior written permission.
47. This Agreement is governed and interpreted according to the laws of the Republic of South Africa.
48. Every term in this Agreement, and each part of any term, shall be separate and detachable from the others. If any term, or part of that term, becomes unenforceable for whatever reason, then that term or part of the term will be treated as if it is not in the Agreement. The remainder of the Agreement will still be valid and enforceable
49. These terms and conditions applies to all transactions between Wirtgen and the Customer or Dealer for the sale and buying of Goods and or services. The Customer or Dealer cannot impose any new or different terms and conditions on Wirtgen. This applies even if the terms and conditions that the Customer or Dealer tries to impose on Wirtgen says something different or say that those terms and conditions will apply. If there is a conflict or inconsistency between Wirtgen provisions in an order and this Agreement, then this Agreement will apply.