

WABAG

General Commercial Terms and Conditions

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- 1. Purchase Order and Acknowledgment of Order**
 - 1.1 The following terms and conditions apply exclusively to all our ("Customer") orders and/or contracts ("Order") with you ("Contractor"), including future Orders, regardless of whether or not reference is expressly made again to these purchase conditions, even if Customer accepts deliveries without reservation in knowledge about Contractor's deviating conditions. Contractor terms and conditions are hereby contradicted and only become part of an Order, if expressly agreed upon by Customer's authorized representative in writing. Customer may cancel the purchase order if Contractor fails to accept the Order in writing within two (2) weeks of receipt (Order confirmation). Order confirmation are only given as signature on Customer issued Order if not agreed otherwise. Contractor's Order confirmation does not introduce changes, especially not if the scope of supply and services have been negotiated by the Parties. It is understood by Contractor that deviating Order confirmation may cause damages to Customer.
 - 1.2 Upon acceptance of the Order, Contractor is obliged to deliver the ordered goods and/or services ("Products") in accurate accordance with the quality, quantity description as agreed in the Order or in referenced or mentioned specifications, bills of materials, drawings and/or the technical documentation, etc. which become integral part of the Order. In any event, the Products have to be fit for the intended purpose of end customer and conforming to end customer's specification.
 - 1.3 In the case of deviations of the acknowledgement of order from the Order, the Customer shall be bound to it, only if he has agreed to the deviations in writing. In particular, the Customer shall be subject to general terms and conditions of the Contractor only to the extent it agreed to the same in writing. Acceptance, in particular of deliveries or services, and effecting of payments shall not imply consent.
 - 1.4 Purchase orders shall only be binding if made in writing. Modifications of or amendments to purchase orders shall only be effective if they were confirmed by the Customer in writing.
- 2. Rights to Use the Products**

Contractor shall grant to Customer a non-exclusive, transferable, world-wide right, which shall not be limited in time, place or content,

 - to use the Products and related documentation, to integrate the Products into other products and to distribute them world-wide; if not specified otherwise, the documentation shall correspond to the specific transaction and state of the art concerning volume, quality and time and shall, at the Customer's choice, be prepared either in the English, French or German language; and made available in an electronic format of Customer's reasonable choice. The documentation shall be up-dated if and when subsequent modifications are made. Contractor shall be obliged to transfer title to the products to the Customer free of charge.
 - to use or allow use of software and the related documentation (together referred to as the "Software") in connection with installation, putting into operation, testing and operation of the Software;
 - to sublicense the right to use the Products to affiliated companies and end customers.
- 3. Responsibility of the Contractor**
 - 3.1 Contractor shall be obliged to strictly comply with all laws, regulations, provisions and rules being in force in the country where the Products are used or which will be enacted/issued during the time of Order implementation and warranty time period.
 - 3.2 Furthermore, Contractor expressly declares that it is quite aware the subject-matter of the end customer contract, that it knows the local conditions and practices, the conditions of the material and of operation in the country of use and on the construction site and that it will take into account all external circumstances in the course of execution of the Order.
 - 3.3 Furthermore, Contractor confirms that he has familiarized himself with the construction site and its surroundings, with the local soil conditions and working conditions, the traffic conditions, conditions of use of the Products, local customs and all other circumstances which are essential for execution of the services/deliveries and with all data and documents of the Customer, if this is necessary due to the type of the service to be performed; all this prior to Order acceptance.
- 3.4 The relevant specific standards, rules and plant standards of the end customer shall apply unless the purchase order and/or the specifications including annexes provide otherwise.
- 3.5 The Contractor shall be obliged to immediately inform the Customer about any discrepancies, in particular with respect to the specifications.
- 3.6 Any damage and disadvantage resulting from non-compliance with the duties set forth in this clause 3 shall fully be borne by the Contractor.
- 4. Performance Time Period/ Delay Penalties**
 - 4.1 The date of acceptance of the Products at the place of complete delivery of Products or the setting-up or assembly – if so agreed in the Order - shall determine the date of delivery. The obligation to deliver Products is complete when the Products are delivered, accepted and completed; including a flawless as built documentation, material test certificates, testing protocols, third party acceptances and the like.
 - 4.2 In the event of a foreseeable delay in delivery, service or subsequent performance, Customer shall be informed immediately, including information on the measures taken or planned by Contractor to speed up work in order to meet the agreed delivery dates.
 - 4.3 If the agreed delivery time period is exceeded or a substantial or material breach of contract is committed, Customer shall be entitled to charge and deduct a contractual penalty amounting to 0.3% of the total contract value as stated in the Order or its amendments but not more than 10% of the total contract value for each commenced working day of such a delay. Payment of contractual penalties shall not release the Contractor from its obligations to perform under the contract or from any statutory and contractual liability resulting therefrom.
 - 4.4 In case the Contractor cannot hand over the complete scope of defined documentation in time, the Customer shall be entitled to charge and deduct a contractual penalty amounting to 0.2% of the total contract value as stated in the Purchasing Order or its amendments for each commenced working day of such a delay, but not more than 5% of the total contract value.
 - 4.5 In the event an appropriate reservation is not made in the course of acceptance of deliveries, services or subsequent performance, a contractual penalty may be claimed nevertheless, until payment of the final invoice. The penalty is independent from damages as sustained by Customer, not subject to judicial moderation but shall be subtracted from any additional Customer's damages based on delay in delivery. When the penalty has accrued in full, Customer is entitled to immediately terminate the entire Order for default and claim damages in accordance with applicable law.
- 5. Follow-up Work and Additional Work**
 - 5.1 Contractor undertakes to also carry out follow-up work and additional work, upon written request by Customer. Such work shall also be carried out in accordance with Order conditions and on the price basis as agreed in the Order.
 - 5.2 If Customer's order does significantly change the scope of the Products, either party may demand an adaptation of the contract value and delivery time period; on the price basis as agreed in the Order. Whenever Contractor believes to be entitled to this adaptation, Contractor shall not be entitled to exceed the agreed dates or to demand extension of a period on the ground of such follow-up work and/or additional work if such additional work is not significant. Contractor shall whenever he deems changes to the scope of Products necessary to render Products fit for purpose inform, Customer immediately in writing. If Contractor has not given such written information to Customer within five (5) working days after a change occurred or should have been known to Contractor, Contractor loses the right to file for a change order.
 - 5.3 However, Contractor shall inform Customer of such a claim for compensation prior to commencement of any work or services. The compensation shall be calculated on the bases for calculation of the price for the contractual service/delivery and the special costs of the requested service/delivery. To the extent possible, the compensation shall be agreed prior to commencement of execution.
- 6. Passing of Risk, Shipment, Place of Performance**
 - 6.1 In the case of deliveries of goods including erection, assembly and commissioning and performance of services, the risk shall pass upon acceptance as given by Customer; in the case of deliveries excluding setting-up, or assembly, the risk shall pass

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- upon receipt at the place of receipt advised by the Customer.
- 6.2 Prices shall be DAP (Incoterms 2020), place as indicated by Customer, if not agreed otherwise.
- 6.3 Packing lists or delivery notes stating the content and the complete order ID shall be enclosed with every delivery. The dispatch advice shall be issued immediately and include the same information. When drafting the packing list, Contractor will use the format as prescribed by Customer.
- 7. Invoices**
- 7.1 Invoices shall state:
- the purchase order ID,
 - the name of the entity to be invoiced
 - the bank account to which the payment is to be made, and
 - the numbers of every single item.
- Second copies of invoices shall be marked as duplicates.
- 7.2 Three copies of the invoices together with all documents necessary for identification, such as the order number etc., shall be presented to Customer (see Order for company name and address). All invoice shall comply with all legal requirements, applicable to Customer at the time of invoice issuance date. Contractors from European Union Member States shall state the movement of the goods in addition to the compulsory statutory details for tax exemption on all invoices.
- 8. Payments/Securities**
- 8.1 Payment shall be subject to a written, correct invoice of Contractor, which shall, in particular, comply with the statutory requirements applicable from time to time (VAT, etc.).
- 8.2 Unless otherwise agreed, payments shall be made at Customer's option either (a) within a period of fourteen (14) days at a 3 % cash discount or (b) within a period of forty-five (45) days at a 2 % cash discount or (c) within a period of sixty (60) days, net.
- 8.3 If not agreed otherwise, Customer shall be entitled to retain a liability cover in the amount of 10% of the total order value as a non-interest-bearing security for performance claims, warranty claims, guarantee claims or any other claims for damages, compensation and the like; for a time period of forty-five (45) days after expiry of the guarantee period. Such liability cover may be redeemed – after successful commissioning and issuance of PAC by Customer or end-user – against presentation of an abstract, unlimited (time period of validity) and irrevocable first demand bank guarantee; issued by a first class bank acceptable and free of charges to Customer.
- 8.4 The payment maturity period shall begin to run as soon as the delivery or service has been rendered completely, accepted and a proper invoice has been received by Customer. Limitation period does start upon acceptance respectively delivery in accordance with applicable Incoterm. To the extent Contractor has to provide materials tests, test reports, quality documents or other documents, completeness of delivery or service shall also be subject to acceptance of such documents. A cash discount shall also be permissible if Customer offsets claims or withholds payments in an appropriate amount on the ground of defects; the payment period shall begin to run after complete repair of the defects.
- 8.5 Payment shall constitute no recognition of adequacy of deliveries or services and, thus, no waiver of performance, warranty, guarantee, damages, contractual penalties, etc. by Customer.
- 8.6 The application of § 1052 Austrian general Civil Code is excluded.
- 9. Limitation of Liability, Force Majeure, Insurance**
- 9.1 Customer's liability shall be limited to intent and gross negligence. The Customer shall in particular not be liable for lost profit or loss of production, indirect, consequential, incidental punitive damages and lost investment.
- 9.2 Contractor shall be released from timely performance of the contract in whole or in part if it is impeded due to events of force majeure. Events of force majeure shall exclusively constitute fire, acts of God, war and riot.
- 9.3 Contractor impeded by an event of force majeure may, however, only claim the existence of force majeure if it submits to Customer a statement by registered letter on the cause, commencement and the expected end of the delay which has been confirmed by the relevant government agency and/or chamber of commerce of the country of destination, without delay but not later than within five (5) calendar days.
- 9.4 If an event of force majeure continues for more than six (6) weeks, the Customer shall be entitled to rescind the contract in whole or in part. In this event, no party shall be liable to the other party.
- 9.6 Customer shall not be liable vis-à-vis Contractor for any consequences of impairment of performance of the contract which are caused by unforeseeable and inevitable events (such as, e.g., operation shutdown, business interruption or the like as well as events of force majeure).
- 9.7 Unless special arrangements have been agreed, Contractor shall be responsible for taking out the necessary insurance itself. However, the Contractor undertakes in any case to take out a business liability insurance including product liability, and in the case of planning services also including a planning liability insurance, with the following minimum coverage:
- (a) Amount insured for personal injury and damage to property as well as mere pecuniary loss in the amount of twice the total order value and not less than EUR 1 million per loss/damage or for a higher amount insured as agreed on a case-by-case basis.
 - (b) Period of coverage from the date of the purchase order until the end of the Contractor's liability period in accordance with the purchase order and not less than thirty-six (36) months after acceptance by Customer's end customer.
- 9.8 Conclusion of such or other insurance contracts shall not limit the Contractor's obligations and liability in any way, whatsoever, even if Customer fails to object to the insurance policy to be presented by the Contractor at Customer's request. The insurance contracts concluded by Contractor shall contain a waiver of recourse in favour of the Customer and the end customer. The insurance contract shall also name Customer as additionally insured.
- 10. Guarantee, Liability for Defects, Spare Parts**
- 10.1 Apart from the properties expressly specified or otherwise promised or which may be expected in general, Contractor, in particular, warrants completeness, freedom from defects and suitability of its deliveries and services for the specific needs, including but not limited to quality and suitability of the deliveries and services for the operating conditions prevailing at the place of use in continuous operation as a part of the entire plant, observance of all standards and official regulations applicable at the place of use (in particular with respect to safety and environmental protection including noise), undisturbed availability in compliance with the power values and consumption values, ease of assembly, maintenance and repair as well as execution in accordance with the state of the art.
- 10.2 The guarantee period shall expire twenty-four (24) months after acceptance of the entire plant and not later than forty-eight (48) months after complete performance in accordance with the purchase order.
- 10.3 The guarantee period shall be extended by the time of standstills, which are caused by defects. In the case of replacement or repair of a part, a new guarantee period shall begin to run as of successful installation of the new part, or upon completion of the repair work which shall be equal to the guarantee period of the first delivery.
- 10.4 Contractor waives the plea of late notification of defects; a defect may be notified for one (1) month after expiry of the guarantee period. The statutory periods for asserting guarantee claims in court shall begin to run upon the end of the guarantee period.
- 10.5 If defects are identified prior to or upon passing of the risk or within the limitation period set forth in this clause, the Contractor shall at its cost and at the Customer's choice either repair the defects or deliver new products or render services which are free from defects. This shall also apply to deliveries which were only examined on a test basis.
- 10.6 If the Contractor fails to effect subsequent performance within a reasonable period to be fixed by the Customer, the Customer shall be entitled to
- rescind the contract in whole or in part without compensation
 - or to claim a price reduction
 - or to claim improvement at the Contractor's cost
 - or to effect or have effected new delivery
 - and to claim damages in lieu of performance.
- 10.7 Additional applicable statutory provisions shall remain unaffected.
- 10.8 Making good may be effected by Customer or its assigned parties at Contractor's cost without fixing of a time limit, if Customer has a special interest in immediate improvement in order to avoid delays on its part or any other urgency, and if it would be unreasonable to ask the Contractor to repair the

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- defect within a reasonable period of time.
- 10.9 The costs and risk of return shipment of the delivery items shall be borne by the Contractor.
- 10.10 The Contractor guarantees that the agreed spare parts, wearing parts and change parts are absolutely sufficient for the period from putting into operation and continuous operation of over two (2) years. Otherwise, the Contractor shall effect the respective subsequent deliveries including packaging to the construction site free of charge. Excessive wear and tear of wearing parts is a defect in the Products.
- 10.11 The Contractor shall, on first demand, fully indemnify and hold the Customer harmless from and against all claims of third parties.
- 10.12 The Contractor shall be obliged to closely monitor the Products and to ensure that the Products are always kept state of the art. The Contractor shall be obliged to hand over to the Customer all manufacturing documents, if necessary. Furthermore, the Contractor shall be obliged to mark the Product as dangerous by using danger symbols, which are easily understandable, and to enclose a detailed user manual with the Products.
- 10.13 The Contractor guarantees availability of spare parts, wearing parts and change parts for the delivery item for ten (10) years after expiry of the guarantee period.
- 11. Liability for Infringement of Proprietary Rights**
A material aspect of the contract for Customer is delivery of Products which are free of defects of title. Contractor undertakes to examine whether the Products are free of defects of title and will inform Customer of conflicting proprietary rights, if any. Any non-fulfilment of such duties shall be subject to the standard statutory period of limitation. If such impairments or infringements of rights are alleged, Contractor undertakes to fully indemnify and hold harmless Customer and/or the end customer, and either to immediately eliminate the infringement of rights or to make available to Customer and the end customer a different acceptable alternative free of charge and without relevant delay in execution of the project/contract.
- 12. Subcontracting with Third Parties**
Subcontracting with third parties shall require Customer's written consent and failure to obtain such consent shall entitle Customer to rescind the Contract in whole or in part and to claim damages. Notwithstanding Customer's consent, Contractor shall continue to be responsible vis-à-vis Customer for all obligations under the agreement and fulfilment of the entire purchase order. Contractor shall be liable for actions and omissions of its subcontractors in the same way as for its own actions and omissions.
- 13. Prohibited Substances**
All delivered products including packaging shall be free from prohibited substances as defined by the laws, standards, guidelines, etc. applicable from time to time. Moreover, Contractor agrees to fully observe and comply with all applicable laws, rules, regulations and orders in force. All delivered goods and/or components inclusive packing have to correspond to the latest domestic and International Security- and Environment regulations and in particular must not contain cadmium, mercury, asbestos, halogenated hydrocarbon (FCKW, CKW), polychlorinated biphenyl (PCB's), polychlorinated terphenyl (PCT's), pentachlorophenol (PCP), polybrominated biphenyl ether (PBBE's) and -biphenyl (PBB's) or combinations of said elements. In case of any breach, Contractor shall indemnify Customer for all damages occurred and all costs incurred by us regardless of the limited periods for actions for breach of warranty and for actions to recover damages, regardless of fault.
- 14. Provision of Material**
14.1 Materials provided shall remain Customer's property and shall be stored, labelled and managed separately and free of charge. They shall exclusively be used for Orders placed by Customer. In the case of lost usefulness or loss, which was caused negligently, Contractor shall be obliged to effect compensation. This shall also apply to calculated provision of material related to a specific order.
14.2 Processing or reshaping of the material shall be effected for Customer. Customer shall immediately become the owner of the new or reshaped item. If this is not possible for legal reasons, Customer and Contractor have agreed that the new item shall become the property of Customer at any stage of processing or reshaping. The Contractor shall store the new item for Customer free of charge with the due care of a prudent tradesman.
- 15. Tools, Moulds, Samples, Confidentiality**
Tools, moulds, samples, models, profiles, drawings, standards sheets, print templates and gauges made available by Customer must not be passed on to third parties or used for purposes other than those contractually agreed, without Customer's written consent, which shall also apply to products manufactured on the basis of the said items. They shall be protected from unauthorized inspection or use. Subject to other rights Customer may demand surrender of the same if Contractor violates these obligations.
- 16. Confidentiality**
Contractor shall not make information it has obtained from Customer accessible to third parties, unless it is already in the public domain or has been lawfully obtained by Contractor in any other way. To the extent Customer agreed to subcontracting with third parties, such third parties shall be made subject to the above obligation in writing accordingly.
- 17. Advertising**
References to an existing business relationship with Customer shall require Customer's written consent.
- 18. Assignment of Claims**
Claims may only be assigned upon Customer's prior written consent.
- 19. Termination**
19.1 In the case of serious breach of contract and after a reasonable grace period, not more than fourteen (14) days, has expired fruitlessly, Customer may terminate the Order in whole or in part.
Serious breach of contract shall include but not be limited to the following:
- if the delivery date or the date of putting the Products into operation is exceeded and the maximum contractual penalty for delay has been exhausted, and/or
- the time schedule for the delivery/performance of Products has been delayed equivalently and Contractor does not substantiate a tangible plan to make up for his delay
- if absolutely guaranteed data/parameters which are based on the values indicated in the inquiry or contract specifications or details contained in the Order are not achieved despite improvement, and/or
- if the guaranteed data which is subject to a contractual penalty exceeds the maximum contractual penalties and an improvement attempt was fruitless, and/or
- if Contractor discontinues its payments, if a provisional receiver in insolvency is appointed or insolvency proceedings are filed for or already opened over Contractor's assets.
19.2 In case of termination for default, Customer may at its sole discretion demand a reversed transaction of all deliveries and services. Irrespective of whether the contract is terminated or not, Customer shall be entitled to perform itself the deliveries and services not carried out or carried out insufficiently (self-performance) or to have them effected by a third party (substitute performance) at Contractor's cost; in such case, Contractor shall use its best efforts to support Customer. Customer may either directly invoice the costs and/or expenses incurred in that connection, which shall become due immediately, or deduct them from the next due payments of Customer to Contractor.
- 20. Setting-off**
20.1 Contractor may only offset undisputed claims or claims as have been determined by final court or arbitration award.
20.2 Customer may offset in accordance with applicable law. In addition, Customer may offset claims of affiliates companies and subsidiaries against Contractor. Customer may offset compensatory claims, cost claims and indemnification claims.
- 21. Supplementary Provisions**
In the case of conflicts between parts of the contract concluded by and between the Contractor and the Customer the following order of priority shall apply:
- purchase order
- negotiation records (Protocol of Contract Negotiations, PCN)

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- these General Commercial Terms and Conditions.

22. Place of Jurisdiction, Applicable Law

- 22.1 The laws of Switzerland shall govern all dispute arising out or related to the Order. The laws of Austria apply exclusively, to the exclusion of its conflicts of laws provisions; the UN Convention on Contracts for the International Sale of Goods of 11 April, 1980 (UN Sales Law) shall be excluded. The exclusive place of jurisdiction for any and all disputes arising out of or in connection with the implementation of the Order, shall be the court of the city of Vienna, Austria.
- 22.2 Notwithstanding the above-mentioned paragraph, shall the Customer and the Contractor be incorporated in the same country, then the exclusive place of jurisdiction for any and all disputes arising out of or in connection with the implementation of the Order, shall be the court with responsibility at the place where the Order was issued. The substantive law applicable at the registered office of the Customer shall apply exclusively, to the exclusion of its conflicts of law's provisions; the UN Convention on Contracts for the International Sale of Goods of 11 April 1980 (UN Sales Law) shall be excluded. Alternatively, and at his sole discretion, Customer may also opt to sue at the court of Contractor's registered office.