

General Terms and Conditions of Sale

1. Scope of application

1.1 Any offer, sale, delivery or service on the part of WIRTGEN is governed exclusively by these General Terms and Conditions of Sale ("Sales Conditions"). Any conflicting or differing terms or conditions applied by the Buyer shall be deemed invalid, regardless of when WIRTGEN learns of them. This shall be the case even if WIRTGEN is aware of conflicting or differing terms or conditions applied by the Buyer but nevertheless makes delivery to the Buyer without reservations. Any deviation from these Sales Conditions shall be valid only if confirmed in writing by WIRTGEN.

1.2 These Sales Conditions shall also apply to any subsequent business transaction with the same Buyer, even if no additional agreement to this effect has been concluded.

1.3 Deliveries that require assembly on location are, in addition, subject to WIRTGEN's Terms and Conditions for Repair and Assembly.

2. Offers and conclusion of contract

2.1 Unless expressly indicated otherwise, all offers made by WIRTGEN are non-binding. Cost estimates are non-binding. Unless otherwise agreed upon, initial offers shall be made free of charge. WIRTGEN reserves the right to charge adequate remuneration for further offers as well as for design work, if a sales contract is not concluded.

2.2 A sales order becomes a valid contract, only if it is confirmed in writing by WIRTGEN. The validity of any modifications, amendments or ancillary agreements to the sales contract is also subject to written confirmation by WIRTGEN.

2.3 Documents supporting the offers, such as illustrations, drawings or specifications of weights and measurements, are approximate unless they have expressly been agreed upon as binding. WIRTGEN reserves all ownership rights and copyright in illustrations, drawings, cost estimates, calculations, and other documents. They may not be disclosed to third parties without prior express written consent from WIRTGEN. Such materials are to be returned to WIRTGEN immediately in the event that

(i) a contract is not concluded or

(ii) performance under a contract has been fully completed.

3. Purchase price and payment

3.1 Unless otherwise agreed upon, WIRTGEN's prices are unpacked "ex works". The rate of VAT applicable on the day the invoice is issued is to be added to the contract price.

3.2 Unless otherwise agreed upon, the payment must be made in full, and without any costs arising for WIRTGEN, as follows:

Machines: Prior to delivery, nett.

Spare parts: Prior to delivery, nett.

Other: Within 14 days after the date of the invoice, nett.

3.3 Bills of exchange and checks shall, at all times, be accepted only on account of performance. All bank charges and exchange costs are borne by the Buyer.

3.4 Payments by Letter of Credit are governed by the ICC's Regulations "Uniform Customs and Practice for Documentary Credits", as then in force.

3.5 The Buyer is not entitled to any set-off, retention or reduction of the purchase price, unless the Buyer's counterclaims are either undisputed by WIRTGEN or have been confirmed by a final court decision. The same shall apply to warranty claims.

3.6 In the event that the Buyer is late in making payment, WIRTGEN is entitled to charge interest at the rate of the German legal provisions applicable for delay in payment. If WIRTGEN establishes that its actual damages resulting from the Buyer's delay of payment were higher, then WIRTGEN is entitled to claim compensation for such higher damages. The Buyer shall, however, be entitled to prove that the actual damages resulting from its late payment were lower.

3.7 Where circumstances come to WIRTGEN's attention indicating that the Buyer's creditworthiness is questionable, all deferred debts become due immediately. Moreover, in such a case, WIRTGEN is entitled to demand payment in advance or the provision of security.

4. Delivery

4.1 Applicable delivery dates shall be agreed individually. A delivery period indicated by WIRTGEN shall commence only once all issues required for the performance of the order have been resolved. This means, in particular, that any required documents, permits or releases that must be provided by the Buyer actually have been provided by the Buyer and received by WIRTGEN, or that an agreed upon down payment actually has been received by WIRTGEN.

4.2 Compliance with the agreed delivery date is subject to the correct and due delivery of the goods to WIRTGEN itself.

4.3 Unless otherwise agreed upon, all deliveries are "ex works". As between the parties, the Buyer shall assume WIRTGEN's obligations under the Federal German Ordinance on Packaging (Verpackungsverordnung) and holds WIRTGEN harmless with respect to the obligations under this ordinance.

4.4 The delivery requirements shall be deemed fulfilled if the goods have left WIRTGEN's warehouse for shipment prior to the end of the delivery period or if the Buyer has been notified that the goods are ready to be sent. Where the Buyer is obligated to accept the delivery, except in case of a justified rejection of the acceptance, the date of acceptance is decisive, or, respectively, the day on which the Buyer has been notified that the delivery is ready for acceptance.

4.5 WIRTGEN may make partial deliveries or partial performances at any time.

4.6 WIRTGEN is not responsible for any delays in delivery or performance, even where fixed

delivery dates or periods are affected and even if WIRTGEN is late, if these delays result from force majeure or any circumstances which significantly impede or prevent delivery by WIRTGEN, in particular, such circumstances include strikes, lockouts or any instructions issued by competent authorities, even if such circumstances occur at the suppliers' or sub-supplier's of WIRTGEN. Under such circumstances, WIRTGEN is entitled to delay its delivery or performance for the duration of the delay caused by the particular circumstances, plus a reasonable period of time for recommencing operations, or to withdraw from the contract in part or in full with regard to the outstanding delivery or performance. WIRTGEN must inform the Buyer as soon as possible of the beginning, the end and the presumed duration of the delay caused by the afore-mentioned circumstances.

4.7 WIRTGEN's deliveries shall not be deemed to be late if the Buyer is provided with replacement goods within the agreed delivery period, which fulfill the technical and functional requirements of the Buyer in all substantial respects, for the period of time until the delivery of the actual goods. WIRTGEN shall bear all costs arising from the provision of the replacement.

4.8 In the event that WIRTGEN is delayed, the Buyer must grant WIRTGEN a reasonable extension of time for performance of the contract.

4.9 In the event that WIRTGEN delays delivery and thus causes any damage to the Buyer, the Buyer shall be entitled to demand a flat amount of compensation for damages caused by such delay. This amount is 0.5% for each full week of delay, but the total amount of compensation is not to exceed 5% of the value of the part of the delivery which could not be used as stipulated in the contract, or in due time.

In the event that the Buyer grants a reasonable extension of time for performance of the contract to WIRTGEN, taking into account any legal exceptions thereof, and if such a delivery period is not met, the Buyer is entitled to withdraw from the contract in accordance with statutory provisions.

The flat amount of compensation for damages shall settle all claims due to delay in delivery. Any claims exceeding this can only be made in accordance with Clause 8.2.

5. Transfer of risk, transport and delivery in acceptance

5.1 Risk shall pass to the Buyer as soon as the goods have left WIRTGEN's warehouse for shipment. This shall also apply in the case of partial deliveries or in the event that WIRTGEN has taken over any further services such as delivery expenses, delivery or installation. Insofar as the Buyer is obligated to accept the delivery, transfer of risk will occur upon such acceptance. The acceptance shall take place either upon the delivery date, or, alternatively, upon the day on which the Buyer has been notified by WIRTGEN that the delivery is ready for acceptance. The Buyer is not entitled to refuse acceptance if a defect is not material.

5.2 In the event that transport or the acceptance is delayed or becomes impossible due to circumstances that are not attributable to WIRTGEN, the risk shall pass to the Buyer upon the day on which it has been notified that the goods are ready for dispatch or acceptance.

5.3 Unless otherwise agreed upon, transport of the goods is affected at the risk and expense of the Buyer.

5.4 If the Buyer so wishes, WIRTGEN shall insure the shipment at the Buyer's costs against theft, breakage, damages resulting from transport, fire and water, as well as against other insurable risks.

5.5 In the event that the Buyer delays acceptance or violates its duty to cooperate in any other way, WIRTGEN is entitled to claim compensation for the damages caused by such delay or violation, including any additional expenditure, in particular, any costs incurred in the delayed acceptance of delivery.

5.6 Where commercial terms such as FOB, CFR, CIF, etc. are agreed upon, they shall be interpreted in accordance with the ICC Incoterms currently in effect.

6. Retention of title and other security interests

6.1 WIRTGEN retains title to all goods delivered to the Buyer until all WIRTGEN's claims for payment against the Buyer under the business relationship including any future claim under contracts signed simultaneously or later have been satisfied by the Buyer in full. This shall also apply, if either individual claims for payment or all of WIRTGEN'S claims for payment have been included in a current account, and the balance was struck and accepted. In the event the Buyer acts in breach of contract, in particular, there is a delay in payment, WIRTGEN, on demand of payment, shall be entitled to take back the delivered goods and simultaneously declare rescission of the contract. In this event, the Buyer is obligated to return the delivered goods.

6.2 The Buyer is entitled to dispose of the delivered goods in the ordinary course of business, provided and to the extent that the conditions to secure WIRTGEN's claims for payment laid down in Clauses 6.3, 6.4, and 6.5 have been fulfilled. Any violation of the obligation contained in the aforementioned sentence gives WIRTGEN the right to terminate the entire business relationship with the Buyer with immediate effect.

6.3 WIRTGEN and the Buyer hereby agree that on conclusion of an individual sales contract between the two parties all claims of the Buyer arising out of the future resale or lease of the delivered goods to a third party or for any other legal reason (insurance, tortious act, etc.) shall be assigned to WIRTGEN to serve as security for all WIRTGEN's claims that may arise out of its business relationship with the Buyer. The Buyer shall, however, remain entitled to collect the assigned claims, as long as WIRTGEN has not requested that the assignment be notified to the third party in question. The Buyer may not re-assign any claims that have already been assigned to WIRTGEN. The Buyer is obligated to assign to WIRTGEN the title or any other right to any goods, machinery parts or used machines of any type that the Buyer has accepted in lieu of payment as soon as the Buyer acquires such title or other right. The Buyer must hold the above-mentioned goods in custody for WIRTGEN, take proper care of them, and insure them as appropriate.

6.4 If the security interests provided for in Clauses 6.1, 6.2, and 6.3 have not been legally recognized in the country where the delivered goods are located, or are not fully enforceable, then the Buyer is obligated to notify WIRTGEN immediately to this effect and offer security of equivalent value.

6.5 The Buyer shall process or transform any goods supplied to it by WIRTGEN under retention of title only on behalf of WIRTGEN. In the event the item under retention of title is processed together with other goods not owned by WIRTGEN, WIRTGEN acquires co-ownership of the new item in proportion to the value of the item supplied by WIRTGEN in comparison with the value of the other processed goods. This value is to be determined at the time of processing.

In the event that WIRTGEN's goods are combined with other movable goods to form one composite good, or are blended inseparably with other goods, and if the other goods are regarded as the main item, the Buyer shall assign WIRTGEN a proportionate co-ownership to the item,

insofar as the Buyer owns the main item.

The Buyer is to keep the goods to which WIRTGEN has ownership or co-ownership in safe custody. The same conditions applicable to the goods under retention of title shall apply to the item after processing or transformation.

6.6 If the value of the securities granted to WIRTGEN under Clauses 6.1 to 6.5 exceeds WIRTGEN's claims arising out of the business relationship with the Buyer by more than 20%, WIRTGEN shall, at the request of the Buyer, release securities of WIRTGEN's choice, to the extent that the threshold is exceeded.

6.7 The Buyer must insure the goods to which WIRTGEN has retained title against theft, breakage, fire, water and other risks ordinarily insured against. WIRTGEN may require the Buyer to prove that a suitable insurance policy has been taken out, and may, if necessary, take out insurance against the above-mentioned risks itself at the expense of the Buyer.

6.8 In case of seizure, attachment or any other intervention by any third party against the goods or claims in which WIRTGEN has a security interest, the Buyer must notify WIRTGEN thereof immediately, and must assist WIRTGEN with the enforcement of WIRTGEN's rights. To the extent that it is not possible to request the third party in question to reimburse WIRTGEN for court or extra judicial fees, any such costs shall be borne by the Buyer.

6.9 If an application for commencing insolvency proceedings has been filed against the Buyer, WIRTGEN is entitled to rescind the contract with immediate effect and request immediate return of the delivered goods.

6.10 Clauses 6.1, 6.3, and 6.9 shall apply accordingly with regard to the goods, machinery parts and used machines, of any type, which may have been accepted by the Buyer in lieu of payment pursuant to Clause 6.3.

7. Warranty

7.1 The following warranty rules shall apply to the delivery of new machines and new spare parts:

7.2 WIRTGEN warrants that the delivered goods are free from defects in accordance with current design and technical standards, provided that with respect to any defects, it can be proved that they were introduced through circumstances that occurred before risk passed to the Buyer, in particular due to a design fault, poor materials or defective workmanship. Any further warranty beyond the above-mentioned conditions is granted only if and to the extent that WIRTGEN has expressly assumed a guarantee for the quality of the delivered goods in the relevant individual sales agreement.

7.3 The Buyer may only assert a warranty claim provided that it first has examined the delivered goods for the existence of any defects within one week of delivery, and in the event of a defect, it has notified WIRTGEN immediately in writing of the defect. Any defect that could not be detected by a thorough examination within this period shall be notified to WIRTGEN in writing immediately after detection. Delivery within the meaning of the first sentence of this Clause is deemed to be the time at which the delivered goods come under the control of the Buyer or could have come under the Buyer's control if the Buyer had not been at fault.

7.4 Changes in the design or specifications of goods that were made before delivery as part of general design or production changes at WIRTGEN shall not be deemed to be defects in the

delivered goods, unless such changes render the delivered goods useless for the purpose intended by the Buyer.

7.5 The warranty against defects in the delivered goods shall comprise the remedy of defects either through repair or replacement, at WIRTGEN's option. WIRTGEN receives title to any replaced parts.

In the event WIRTGEN fails to remedy the defects in question, the Buyer is entitled to specify a realistic period of time within which WIRTGEN must complete further repairs or replacement. If WIRTGEN once again fails to remedy the defect, then the Buyer may either request a reduction in the purchase price corresponding to the amount by which the value of the delivered goods was reduced due to the defect, or rescind the contract, at the Buyer's option. In the event of an insubstantial defect, the Buyer is only entitled to a reduction in the purchase price.

7.6 In agreement with WIRTGEN, the Buyer shall arrange for WIRTGEN to have sufficient time and opportunity to carry out all repairs or replacements that are required in WIRTGEN's judgment. If the Buyer does not do so, WIRTGEN is released from its warranty obligations and any liability arising out of those obligations. The Buyer is only entitled to remedy a defect covered by WIRTGEN's warranty by itself or have it remedied by a third party at WIRTGEN's expense if this is necessary to avert a dangerous risk to the safety of operations and/or to avoid a disproportionately high damage. The Buyer must notify WIRTGEN immediately in such an event.

7.7 WIRTGEN's warranty does not cover any incidental costs arising from the work required to remedy a defect, including, in particular, freight costs, import costs and customs duties, travel expenses, food and lodging, towing and crane charges, and costs required to assign mechanics and temporary staff.

7.8 WIRTGEN's warranty for major components that have not been produced by WIRTGEN is limited to the assignment of its claims against the supplier of such components. In the event that justified warranty claims by the Buyer are not satisfied by the supplier of the components in question, even though the Buyer has taken all reasonable steps to enforce its claims, including the pursuit of legal proceedings, WIRTGEN shall, pursuant to the provisions of this Clause 7, assume secondary responsibility for fulfilment of the warranty. However, such secondary responsibility shall exclude responsibility for any costs incurred by the Buyer in pursuing its legal rights against the supplier of the components in question.

7.9 WIRTGEN is not liable for any damage unless it can be proven that such damage is a result of WIRTGEN's fault. This applies in particular, but is not limited to:

- * normal wear and tear;
- * unsuitable or improper use;
- * faulty assembly or putting into service by the Buyer or third parties;
- * faulty or negligent handling;
- * use of unsuitable fuel, oils and lubricants;
- * use of unsuitable replacement materials and parts;
- * chemical, electrochemical, electromagnetic, electrical or similar influences.

WIRTGEN's warranty obligations also expire where the delivered goods are not maintained and

serviced at the stipulated maintenance intervals by either WIRTGEN itself, any authorized WIRTGEN dealer, or the Buyer or operator of the product according to WIRTGEN's instructions (the operating manual).

7.10 In the event that either the Buyer or any third party carries out repairs improperly, WIRTGEN is not liable for the consequences arising from this improper repair. The same shall apply to any alterations made to the delivered goods without the prior consent of WIRTGEN.

7.11 WIRTGEN may refuse to honour its warranty obligations as long as the Buyer has not fulfilled its contractual obligations.

7.12 The provisions laid down in Clause 7 are the final and exclusive provisions that govern WIRTGEN's warranty obligations for delivered goods. Any further claims of the Buyer, in particular for damage other than to the delivered goods themselves, are subject exclusively to the provisions of Clause 8.

7.13 The exclusions and limitations of WIRTGEN's liability set out in the foregoing provisions shall also apply to exclude and limit the personal liability of WIRTGEN's employees and other staff as well as their representatives and persons appointed by WIRTGEN to perform its obligations.

7.14 WIRTGEN does not take on any warranty for the delivery of used machines and spare parts. WIRTGEN's liability pursuant to Clause 8 shall remain unaffected by this exclusion of warranty.

8. Liability for ancillary obligations

8.1 If the Buyer is unable to use the goods in accordance with the contract due to a fault of WIRTGEN by having omitted or provided faulty advice or proposals, or due to the violation of other contractual ancillary obligations by WIRTGEN, in particular in instructions for the operation and maintenance of the delivered goods, the provisions of Clauses 7 and 8.2 shall apply accordingly, excluding any further claims by the Buyer.

8.2 WIRTGEN only becomes liable for any damage caused to other than the delivered goods themselves, for whatever legal reasons, in the case of:

- * wilful intent on the part of WIRTGEN;
- * gross negligence by WIRTGEN's owners, its corporate bodies, the management or senior staff;
- * culpable infringement of life, physical well-being and health;
- * defects concealed fraudulently by WIRTGEN or a guaranteed lack of defects;
- * defects caused to the delivered goods to the extent that liability for personal or material damage resulting from goods that are used for private purposes is subject to the provisions of the Product Liability Act.

In the event of culpable infringement of contractual obligations amounting to a fundamental breach of contract, WIRTGEN is also liable for gross negligence by its employees not belonging to the senior staff. In the event of simple negligence, the aforementioned liability is limited to damage that is reasonably foreseeable and typical for that type of contract. Any further claims are excluded.

9. Statute of limitations

Any claims by the Buyer, submitted for whatever legal reasons, shall become statute-barred after the expiry of 12 months. In the case of intentional or fraudulent conduct and in case of claims submitted pursuant to the provisions of the Product Liability Act, the statutory limitation terms shall apply.

10. Use of software

110.1 As far as the scope of delivery contains software, the Buyer is granted the non-exclusive right to use the delivered software, including its documentation. The Buyer may use the software only in conjunction with the delivered good for which the software is to be utilized. Any use of the software in more than one system is prohibited.

110.2 Any other rights concerning the software and its documentation, including copies, must remain with the supplier and/or software supplier. Sub-licences may not be granted.

11. Applicable law, choice of forum, severability clause

11.1 The contractual relationship between WIRTGEN and the Buyer is governed exclusively by the law of the Federal Republic of Germany, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

11.2 The sole and exclusive court of jurisdiction for any legal dispute arising from the contractual relationship between WIRTGEN and the Buyer, including claims relating to bills of exchange or checks, shall be the competent court for the head office of WIRTGEN. WIRTGEN shall, however, at its option be entitled to bring an action against the Buyer with the competent court that has general jurisdiction over the Buyer.

11.3 Only the German text of these Sales Conditions is legally binding for the contractual relationship.

11.4 If any or more of the provisions or parts of the provisions contained in these Sales Conditions are or should become invalid for any reason whatsoever, this shall not affect the validity of the remaining provisions thereof. The Buyer and WIRTGEN agree to replace any such invalid provision or part of a provision by a provision reflecting the purpose of this contract to the best extent possible. The same shall apply in the case of any material gap that has not been contemplated within in these Sales Conditions.