

## **Standard Terms and Conditions of Purchase for PUR-NPM & PUR (WILO SE & SUBSIDIARIES)**

### **§ 1 General information**

(1) The written agreement including the WILO Standard Terms and Conditions of Purchase alone shall be pertinent for the legal relationship between WILO SE or its SUBSIDIARIES (also see Annex “**WILO SE subsidiaries**”, hereinafter: “WILO”) and the contracting partner. This document comprises any and all provisions concerning the subject matter of the present agreement established between the parties to the agreement. Any oral agreements between the contracting partners prior to conclusion of this agreement are not legally binding and oral agreements between the parties to the agreement shall be replaced by the written agreement unless it is expressly indicated that they continue to be legally binding. Additions and amendments to the agreed provisions, including the present Terms and Conditions require written form. With the exception of Managing Directors or authorised signatories, the contracting partner’s employees are generally not authorised to enter into any oral agreements deviating therefrom; exceptions from this provision may be agreed between the two contracting parties in writing. To comply with the required written form, the above communication may be transmitted by facsimile, qualified email (electronic signature), RDT (remote data transmission, e.g. via modem, ISDN, Datex-P, etc.), EDI (electronic data/document interchange); otherwise, transmission by telecommunication means shall not be sufficient.

(2) Information provided by the contracting partner of WILO about the subject matter of the delivery or service (e.g. weight, use values, load-bearing capacity, tolerances and technical data) as well as illustrations of the same by WILO (e.g. drawings and illustrations) are relevant in that they represent the basis for usability as intended by the contract as well as exact consistency. In that respect, they represent guaranteed properties and characteristics as well as descriptions or identifications of the delivery or service. Variations customary in the trade and variations ensuing from statutory regulations or which constitute technical improvements as well as replacing components by parts of the same standard shall only be admissible after prior consent by WILO and insofar as they do not adversely affect the use for the contractually intended purpose.

(3) Unless orders or assignments by WILO contain no explicit commitment period, WILO shall be bound by them for the period of 1 week starting on the order date. Access to the declaration of acceptance at WILO represents the relevant point in time with respect to timely acceptance by WILO’s contracting partner.

(4) WILO is authorised to change the time and place of delivery as well as the type of packaging by means of written communication and up until a minimum of 3 working days prior to the agreed date of delivery. The same shall apply to changes in standardised product specifications to the extent that they can be implemented within the scope of the contracting partner’s regular production process and without requiring significant additional expenses or resources; with respect to the latter a notification period of at least 7 working days shall apply. WILO shall only reimburse the contracting partner for appropriately substantiated and reasonable costs additionally incurred as a consequence of the changes under the proviso of a separate written prior agreement in that respect.

In case such changes initiated by WILO cause delivery delays that cannot be reasonably avoided within the scope of the contracting partner’s regular production and business operations, the original delivery date is postponed, accordingly. The case of delay in delivery including the ensuing legal consequences or obligations stipulated as per individual contract shall expressly remain unaffected by the above. The contracting partner shall thoroughly assess the additional costs or delay in delivery to be expected and notify WILO thereof in good time prior to the delivery date but at least within 7 working days after receiving our notification pursuant to Sentence 1 or Sentence 2 in writing.

(5) WILO is authorised to cancel the agreement by means of a written declaration specifying the reasons if WILO has no use for the products ordered in their business operations any longer based on circumstances manifesting themselves after conclusion of contract. In this case, WILO undertakes to pay the contracting partner for its partial performance at cost as specified by the contracting partner (“open book principle”).

(6) The contracting partner shall discuss the scope of supply and performance including all drawings potentially required (CAD format) and all CE conformity declarations to be submitted, documentation and other papers as well as all necessary scheduling shall be discussed with the WILO project management team. The contracting partner, service provider or other contracting partner of WILO (including all contractors used by contracting partners of WILO) are obliged to examine any and all documents and information submitted regarding their accuracy, completeness, appropriateness and usability for implementing the assignment; this applies in particular with respect to the documents and information submitted by WILO. Insofar as variations or similar deviations are identified with regard to the documents and project requirements submitted by WILO, the contracting partner is obliged to immediately notify WILO thereof in writing and to provide a corresponding solution approach.

(7) The contracting partner is well-acquainted with the assembly sites and places of delivery, application or performance as well as the subsequent operating conditions of the plants to be set up and the services or products to be delivered. Consequently, it shall take into account all conditions and factors that may affect plant assembly, machinery or execution of the order and delivery of the product, respectively.

(8) The contracting partner is obliged to acquaint itself with the current version of the relevant Annex "**Safety requirements for contractors**" as well as all associated specific "work permits" prior to entering the WILO premises and beginning of work. The contracting partner's assignment is in fact binding only subsequent to acknowledgment and observation of the above provisions.

Moreover, the contracting party undertakes to instruct all employees to be assigned to the respective premises, accordingly. The respective employees concerned are obliged to confirm in writing that they have received above instruction using the form "work permit" and to hand it over to the respective project leader prior to starting on the respective assignment.

WILO expects the above documents to be common knowledge and available on site. Insofar as the contracting partner is not familiar with the above documents, e.g. from previous assignments, they are to be requested from WILO as a matter of course. In urgent cases (e.g. emergencies), the documents mentioned above may also be requested directly from WILO upon entering the company site by the contracting partner and are to be signed and returned to WILO prior to carrying out the assignment.

(9) The contracting partner confirms to have any and all qualifications, confirmations, instruction certificates, certifications and official authorisations and to fulfil any and all additional requirements associated with the performance of services. The contracting partner (or third party assigned to the task) is responsible for dealing with matters concerning tax and social security law as well as a potential business registration.

(10) WILO shall not be charged for enquiries, draft quotes, orders, visits, diagrams (CAD drawings, preliminary reports, projects, other drafts, etc. (no pay or compensation).

(11) WILO will not provide any separate reimbursement for expenses or other working equipment (e.g. rental equipment, etc.). Exceptional reimbursement for the contracting partner requires prior (written) approval by WILO.

(12) Insofar as the contracting partner makes use of WILO installations or installations paid for by WILO, the costs incurred by WILO shall be spread across the parties concerned (contracting partner or third parties commissioned by it) on a pro rata basis based on the total billing amount.

## **§ 2 Software use**

(1) Insofar as the contracting partner's scope of delivery comprises software, WILO is granted a non-excludable right to make use of the software supplied, including its complete, current documentation. It is not only provided for use concerning the dedicated supply and service item. Using the software on more than one system therefore is expressly admissible provided the license provisions mutually agreed in this respect do not expressly provide for a deviating regulation. WILO is thus authorised to use the software in accordance with the statutory provisions (sec. 69a et seq. German Copyright Act [UrhG]).

(2) Unless otherwise agreed between WILO and the contracting partner, the contracting partner, subsequent to a corresponding notification and during regular business hours, is obliged to perform regular software updates that are free of charge for WILO. The respective warranty period or regular limitation period starts over again, accordingly.

## **§ 3 Prices, terms of payment, invoice information**

(1) Only the prices agreed between WILO and the contracting partner shall apply. These are net prices agreed only by the WILO purchasing department and the contracting partner and which are indicated separately in the respective order or framework agreement. In any case, before and at any other point in time of such an (on-going) price agreement, WILO is authorised to perform a detailed cost and value analysis on site of the contracting partner or its upstream source of supply, associated with cost reduction measures that are binding for the contracting partner prior to concluding the respective price agreement.

The price indicated in the order is binding and represents a fixed price until execution of the order. It applies to the scope of performance and supply as well as the period of time indicated in the order confirmations.

However, should a new cost and value analysis performed by WILO during the order period or the respective framework agreement indicate that WILO requires a price adaptation, WILO undertakes to notify the contracting thereof, specifying the respective reasons. The contracting partner is obliged to contribute to a consensual price adaptation.

Any additional or special goods and services supplied shall only be charged for separately under the proviso of prior written agreement. Unless agreed otherwise beforehand, all prices are in EURO before the respective applicable value added tax; in case of export deliveries, prices are before customs and fees as well as other statutory charges.

(2) In case no prices are indicated the contracting partner's list prices applicable at the order date shall apply. The list prices applicable at the order date shall also apply if they are changed after the order date. The list prices do not affect the place of performance.

(3) Unless expressly agreed otherwise in writing, the price includes delivery and transport including unloading at the delivery address specified in the agreement at the contracting partner's or its contractor's risk (delivery free place of receipt, including packaging).

(4) If, according to the agreement, in exceptional cases the price does not include packaging or transport and payment for the packaging – insofar as packaging is just provided on a loan basis – is not explicitly specified, it shall be charged to WILO at cost ("open book principle"). Upon request by WILO, the contracting partner is obliged to take back the packaging at its own expense. In all other cases, the obligation to take back packaging on the part of the contracting partner and its contractors shall be governed by the pertinent statutory provisions. The contracting partner shall bear all storage, return and disposal costs.

(5) Unless specified otherwise, WILO shall pay the agreed price within the period specified in the Annex "**WILO standard payment periods**" after delivery and accepting the goods as in compliance with the agreement and receipt of the proper invoice. Unless provided otherwise in the Annex "**WILO standard payment periods**", the statutory periods shall apply. As long as defects in delivery and/or performance have not been remedied in their entirety, WILO is authorised to retain the invoice amount in full.

(6) All order confirmations, delivery notes and invoices shall contain

- Company name / address
- Tax code or VAT registration number
- Order number
- Order date
- Item number or customary designation
- Net amount
- Tax rate or tax amount
- Payment terms and conditions
- Invoice date
- Delivery amount
- Delivery date and
- WILO delivery address

(7) Should one or more of this specifications be missing and should, within the scope of WILO's regular business activities, processing at WILO be delayed, the payment periods mentioned in para. 5 are extended in accordance with the period of delay. In case invoices are rejected, the date of receipt of the corrected invoice at WILO shall represent the relevant date of reference.

WILO and its contracting partners may agree to transmit their invoice data via electronic data interchange (EDI), in accordance with the Annex "**WILO EDI invoice agreement**". All payment agreements in effect between WILO and its contracting partners shall become invalid upon entry into force of such an agreement. Such an agreement essentially intends to ensure compliance with legal requirements regarding value added tax, and particularly the regulations of the German Value Added Tax Act with respect to authenticity of origin and data integrity and the Council Directive on the Common System of Value Added Tax (2006/112/EC). The agreement is based on the recommendation (94/820/EC) by the European Commission dated 19 October 1994 quoted in § 14 para. 3 Value Added Tax Act [UStG] concerning the legal aspects of electronic data interchange. Using the recommended European template contract aims to ensure legal certainty for WILO and its contracting partners and avoid case-to-case negotiations.

(8) In case of delivery or performance before the due date, the payment period shall only start on the date the delivery or performance would have been due. On principle, WILO is free to choose the respective means of payment.

(9) In case of a payment delay, WILO is only liable for past-due interest in the amount of 5 % above the respective default interest rate pursuant to the statutory regulations pursuant to § 247 German Civil Code [BGB] in conjunction with § 352 German Commercial Code [HGB]. Additional interests payable to the contracting partner by WILO (e.g. default interest, § 353 Commercial Code [HGB]) are expressly ruled out according to the present agreement.

(10) Contractual provisions concerning foreign currency debt require a separate, written case-to-case agreement.

(11) Any and all payments by WILO shall only be made subsequent to delivery, performance or execution and acceptance as in accordance with the agreement. This also comprises the delivery of a corresponding CE or conformity declaration as well as all technical documentation and other documents relevant to the agreement.

(12) All work payable at hourly or daily rates will be invoiced at the applicable rates agreed with WILO in writing and on the basis of appropriate and sufficiently detailed time-sheets submitted in good time. Only WILO time-sheet forms shall be used for the above documentation.

Prior approval by WILO is required concerning the price of spare parts potentially required.

(13) Concerning repairs on plant equipment and other equipment, prior to carrying out the repair works, the contracting partner is obliged to compile a detailed cost assessment that, unless previously agreed otherwise, is free of charge for WILO and is compiled on a net price basis and – insofar as it can be assessed – also has to contain detailed information about the cause of the damage.

Repair works may only be initiated subsequent to approval of the cost assessment by WILO.

WILO retains sole, exclusive and unencumbered ownership of the plant equipment, assets and other items before, during and after the repair. Should the contracting partner, its contractors or a third party cause damage or destruction during the repair works, the contracting partner shall be held liable for the respective damages.

(14) Offsetting against counter-claims by the contracting partner or retaining payments or performance of service for such claims is admissible under the proviso that the counter-claims are undisputed or have been determined to be valid by law.

(15) WILO retains sole ownership and sole usage and exploitation rights in any and all tools, moulds, plans or other documents or templates made available to the contracting partner.

WILO obtains sole ownership of any and all tools, moulds, materials, plans, other documents or templates manufactured by the contracting partner or by third parties for delivery to WILO upon production, and these tools, moulds, materials, plans, other documents or templates are to be visibly identified as such. The contracting partner or any third parties transfer all rights of use and in particular any rights to reproduction, etc. concerning the above tools, moulds, materials, plans, other documents or templates to WILO. Against this backdrop, upon request by WILO, the contracting partner undertakes to hand over all manufactured tools, moulds, materials, plans, other documents or templates without delay or reservation and free of charge to WILO.

The contracting partner is obliged to notify WILO of any change of its business location in writing. The tools, moulds, plans or other documents or templates are to be maintained in usable condition and suitable for production, respectively. The contracting partner is obliged to identify any tools, moulds, plans or other documents or templates as dedicated for the production of WILO products.

The contracting partner is obliged, upon request by WILO, to hand over the tools, moulds, plans or other documents or templates without delay to WILO or the third parties commissioned by WILO if it fails to fulfil its contractual obligations vis-à-vis WILO or is no longer obliged to do so. Any retention rights concerning the tools, moulds, plans or other documents or templates on the part of the contracting partner are excluded.

#### **§ 4 Delivery period and delivery, passing of risk**

(1) Any order is to be confirmed without delay and by the due date provided by WILO, stating the WILO order number and data, the binding delivery date and a binding fixed price. WILO expressly reserves the right to cancel any orders that have not been confirmed by WILO's contracting partner within the required period at no charge to WILO.

(2) The delivery time (delivery date or period) indicated in the order is binding. Receipt of the goods and the performance of the services at the place of receipt or usage specified by WILO is the pertinent point of reference with respect to compliance with the date of delivery or performance or the period of delivery or performance, provided the delivery or performance has been concluded in due time and in compliance with the contractual provisions, or WILO has confirmed appropriate and timely delivery or performance. Should the contracting partner become aware that the agreed date cannot be met, regardless of the reasons thereof, the contracting partner undertakes to notify WILO without delay, specifying the reasons and the duration of the expected delay in writing. If this is not done immediately, or if WILO deems the delay unacceptable, WILO is entitled to cancel parts of the delivery and services ordered, respectively, or cancel the entire agreement without specifying any reasons and without any ensuing claims against WILO. The contracting partner is liable towards WILO for damages in accordance with the statutory provisions on damages comprising, in particular, also lost profits. It is expressly permitted to pass on penalties imposed on WILO by third parties; the same applies to cases of operational necessity on the part of WILO concerning necessary replacements for the delivery and services originally agreed (also comprising potential additional costs incurred by WILO because of the necessary replacement, which are directly passed on to the contracting partner by WILO).

Accepting the delayed delivery or services does not represent a waiver of damage claims, claims to lost profit, claims ensuing from contractual penalties or necessary replacements by WILO. Prior to issuing a cancellation of contract, WILO is only required to grant the contracting partner an appropriate period for delivery or subsequent performance in case no delivery date was determined. Moreover, WILO is authorised to withdraw from the contract before performance is due if it is obvious that the prerequisites for cancellation will be fulfilled.

In case a delivery date or delivery period has been set, by means of these Standard Terms and Conditions of Purchase, WILO thus exclusively attributes the continuation of its interest in performance of the delivery or services to timely performance.

(3) In case of a delay in delivery, WILO is entitled to the statutory claims without restriction, including the right of withdrawal and its claim to payment of damages instead of performance.

If it is possible to determine the latest date of delivery based on the contract, the contracting partner is in default upon expiry of this day without requiring a reminder by WILO. WILO expressly reserves the right to assert claims ensuing from this default as well as assert a contractual penalty. The same applies to asserting a breach of an accessory contractual obligation.

(4) On principle, early deliveries are not admissible unless WILO received prior notification and granted approval thereof. Should the contracting partner deliver early, WILO is entitled to either return the delivery at the contracting partner's expense or store the goods until the agreed delivery date at the contracting partner's expense and risk.

WILO shall accept partial deliveries upon explicit approval. In case of agreed partial deliveries, the outstanding remainder of the delivery is to be specified in writing at the time of delivery. On principle, the contracting partner is not entitled to perform partial deliveries. If WILO has to make covering purchases as a consequence, the contracting partner shall bear all associated additional costs.

Irrespective of WILO's statutory warranty rights, over- or under-deliveries are only possible upon approval by WILO. The same applies to any changes in manufacturing sites or processes.

(5) WILO is entitled to charging a contractual penalty in the amount of between 1 % and up to a maximum of 5 % of the respective order's net value for the beginning of each week in default. The contractual penalty is not offset against the default damage to be paid by the contracting partner.

(6) Transfer of risk to WILO is only concluded once the goods have been handed over at the agreed destination also if shipping has been agreed. Shipping is performed at the exclusive risk of the contracting partner and/or its commissioned contractor. This risk and also the risk of deterioration including the risk of accidental loss remain exclusively with the contracting partner until delivery at delivery address or centre specified by WILO in accordance with the present agreement.

(7) Delivery is subject to the respective current version of the "Incoterms" (status quo: Incoterms 2010).

### **§ 5 Ownership protection**

(1) WILO reserves all property rights and/or copyrights in any orders, assignments as well as drawings, illustrations, calculations, descriptions and other documents made available to the contracting partner. Without explicit authorisation by WILO, the contracting partner must not make them available to third parties or publish them, use or reproduce them itself or have them used or reproduced by third parties. Upon request by WILO, it undertakes to return these documents and potential copies to WILO in their entirety when they are no longer required within the scope of its ordinary business activities or if negotiations do not result in the conclusion of an agreement.

(2) Tools, devices and models made available to the contracting partner by WILO, or which are specially manufactured for contractual purposes and charged separately to WILO by the contracting partner remain property of WILO or become property of WILO. The contracting partner undertakes to specify them as WILO property, store them safely and securely, insure them and only use them for the purpose of the agreement. Maintenance and repair costs of these items are borne by the contracting partner alone. To the extent that these costs are incurred based on faults of such items used and/or manufactured by the contracting partner or inappropriate use by the contracting partner, its employees or other agents, they are also to be borne by the contracting partner alone. The contracting partner will notify WILO immediately of any significant damages of these items in writing. Upon request, it is required to return these items in proper condition to WILO when they are no longer required for fulfilling the agreements concluded with WILO.

(3) Reservations of title on the part of the contracting partner only apply to the extent that they refer to WILO's payment obligations for the respective products the contracting partner reserves title in.

(4) If, according to the standards of a prudent businessman, there is a risk that the contracting partner, irrespective of the reasons, encounters a liquidity bottleneck or runs the risk of insolvency, it undertakes to immediately notify WILO in writing, specifying the reasons of a potential insolvency proceedings (including the case of personal management on the part of the debtor during insolvency). It furthermore expressly confirms WILO's unimpeachable right to identify at short notice all tools, moulds, plans, other documents or templates remaining the sole property of WILO and that are subject to the sole right of use and exploitation it has made available to the contracting partner, and remove them from the contracting partner's scope of influence.

### **§ 6 Warranty and liability for defects**

(1) In case of defects, WILO is entitled to the statutory claims without restriction. The warranty period starts at delivery or, in case clearance is required, approval by WILO by means of an acceptance report.

(2) The defective delivery items are to be returned to WILO's contracting partner upon request by a third party (freight and carriage paid). In case of a legitimate notification of defects, the contracting partner shall offer to refund the most favourable dispatch type; this applies in particular also if the costs increase because the delivery item is located at a different place than the place of intended use.

(3) In case of quality defects of the supplied items, the contracting partner is firstly obliged and entitled to choose to either rectify the defect or provide for a replacement delivery within an appropriate period of time. In case of

failure, i.e. if such rectification or replacement is impossible, unreasonable, unsuccessful, refused or unreasonably delayed, WILO may withdraw from the agreement or reduce the purchase price by an appropriate amount.

(4) If a defect is culpably caused by the contracting partner, WILO, as principal, is entitled to damage claims.

(5) In case of defects in parts provided by other manufacturers the contracting partner is incapable of rectifying for licensing or factual reasons, the contracting partner may assert its warranty claims against the manufacturers and contractors on account of the principal. For the duration of the legal dispute, the limitation period concerning the corresponding warranty claims by WILO against the contracting partner is suspended.

(6) Quality and quantity deviations are considered as reported in good time if WILO communicates them to the contracting partner within a period of 7 working days after receipt of the goods at WILO. Latent material defects are considered as reported in good time if the contracting partner is notified thereof within a period of 7 working days after discovery of the defect.

(7) Acceptance based on the acceptance report or approval of samples does not represent a waiver of warranty claims on the part of WILO.

(8) The limitation period of warranty claims is suspended upon receipt of the written notice of defect by the contracting partner. In case of replacement delivery and rectification of defect, the warranty period for replaced and rectified parts starts over again, unless agreed otherwise.

(9) The contracting partner guarantees that any and all components it supplies and all services it delivers are in compliance with the state of the art, the respective regulations and provisions and guidelines by the authorities, the relevant professional and industry associations and EU standards. Any and all product properties are guaranteed to be accordance with the relevant EU standards and material data sheets, respectively, unless other standards have been expressly agreed with WILO in writing. In case there are no relevant EU standards or material data sheets available as point of reference or if these have ceased to be valid, the corresponding DIN standards shall apply; if no such DIN standards exist, the standards of common practice shall apply unless they fall short of the state of the art. The content and scope of technical documentation is governed by the EU directives and the regulations of the EU member states the product is sold to. References to standards, material data sheets or test certificates as well as specifications concerning quality, measurements and usability on the part of the contracting partner are guaranteed to WILO by the contracting partner.

(10) If, as an exception, deviations from these provisions become necessary, the contracting partner is obliged to obtain written approval by WILO in good time. The contractual duties of the contracting partner are not affected by such an approval. If the contracting partner has reservations with respect to the type of performance requested by WILO it has to notify WILO thereof in writing, specifying the reasons.

#### (11) Defects

WILO is not obliged to examine the goods and open any packaging. The contracting partner's statutory rights in case of obvious defects remain unaffected. Payment of invoice does not represent an acknowledgement that the goods have been ordered and are complete or free of defects and shall represent no waiver of claims arising from warranty or default.

All quality defects, differing amounts and dimensions are considered latent defects and make the contracting partner liable for defects, also if such defects are determined only by WILO's final customers, unless they are obvious. In case of delivery of defective goods, the contracting partner is thus entitled to refer to the lack of notification on the part of WILO if it initially requested WILO, as soon as possible after delivery and within an appropriate period of time, to examine the delivered goods to determine whether they were free of defects and provide a corresponding report.

In case of defects and in case of non-approved partial delivery, WILO is entitled to request subsequent performance from the contracting partner, either consisting in the delivery of an item free of defects or by repairing the defect. The contracting partner is to bear all expenses required to perform above subsequent performance. This includes, inter alia, transport, infrastructure, labour and material costs as well as shipping costs. If the subsequent performance fails, WILO is entitled to continue to request subsequent performance.

The contracting partner may only refuse the type of subsequent performance requested by WILO if such is only feasible in association with unreasonable costs. In this case, WILO's claim is limited to the other type of subsequent performance provided the contracting partner provides proof of the unreasonable costs in writing.

If the contracting partner fails to meet its obligations with respect to subsequent performance within an appropriate period as determined by WILO, WILO is entitled to either obtain a replacement at the contracting partner's expense or repair the goods' defect itself or have them repaired otherwise at the contracting partner's expense. Moreover, WILO may also reduce the price in case a reduced value is the consequence. Damage claims on the part of WILO remain unaffected of the above.

The warranty period for defects begins with the handover of the goods to WILO or third parties specified by WILO or the respective place of receipt or place of use, unless no later date has been expressly determined.

Unless otherwise agreed in writing, the warranty period for defects as of this date amounts to a minimum of 3 years and 5 years as of this date in case the items concerned are delivery items that are used for a building in accordance with their customary purpose. The above regulation also applies to the delivery of spare parts. In case parts are delivered or repaired within the scope of subsequent performance, the general provisions apply for the beginning of the respective limitation period set forth herein.

Unless expressly provided otherwise above, the statutory provisions shall apply otherwise or instead.

(12) The contracting partner shall implement the appropriate extent and type of quality assurance in accordance with the state of the art and be able to provide proof thereof upon request. If required by WILO, it shall conclude a corresponding quality assurance agreement according to the Annex "**WILO SE Quality Guideline**" with WILO.

(13) Costs incurred by additional expenses caused by sorting, providing parts for return shipping, compiling delivery notes, remedies and supplementary deliveries such as for travelling, transportation, infrastructure, labour, packaging and material costs as well as assembly and disassembly costs in the plant, in storage or in the field are to be borne by the contracting partner.

The contracting partner shall be liable for all damages caused by its defective or poor quality parts and materials; it shall in particular be liable for damages occurring at WILO's customers and which are asserted against WILO by the customer.

If, based on a risk analysis performed as a consequence of defective products, the contracting partner learns that WILO arrangements including defective products of the contracting partner have already been delivered and, as a consequence of these defects, may give rise to warranty and product liability claims, WILO is entitled to perform precautionary measures.

To the extent that it is possible, WILO shall notify the contracting partner of the reason, scope and type of measures prior to carrying out these measures.

The parties to this agreement agree that pre-emptive measures are such measures that do not relate to individual defective products but comprise all products manufactured during a certain period. Pre-emptive measures are, in particular, but not limited to: recall or remodelling activities, preventive measures such as replacement, etc. These measures may also apply to the entire series. The costs of such a pre-emptive measure such as, e.g. transport, labour, assembly and disassembly are borne by the contracting partner.

The contracting partner further assures that an appropriate liability or product liability insurance is in place to cover potential liability obligations and particularly product liability claims as well as recalls, the minimum coverage being 10 million EURO for each individual case. The contracting partner shall supply a confirmation of insurance upon request by WILO.

## **§ 7 Product liability**

(1) The contracting partner is responsible for all claims asserted by third parties concerning personal injuries or property damages caused by a defective product supplied by the contracting partner. This also applies if WILO is held liable for violation of official safety provisions or domestic or international product liability regulations or laws with respect to a defective product and this defect is caused by a defective product by the contracting partner. The contracting partner is obliged to indemnify and hold harmless WILO against the resulting liability. If WILO is obliged to perform a recall with respect to third parties because of a defect of a product supplied by the contracting partner, the contracting partner shall bear all costs associated with the recall.

(2) The contracting partner is obliged to take out a product liability insurance in the amount of at least 10 million EURO at its own expense that, unless agreed otherwise, is maintained by the contracting partner for a period of at least 6 years after delivery of the products by the contracting partner and comprises an extended liability coverage period of at least 5 years after termination of the insurance contract. Such product liability insurance of the contracting partner also is to cover what is referred to as extended product liability (e.g. assembly and disassembly costs, other subsequent costs, etc.) and coverage is to be at least 10 million EURO; the insurance is to be maintained for a period of at least 6 years after delivery of the products by the contracting partner and is to comprise an extended liability coverage period of at least 5 years after termination of the insurance contract. Further, the contracting partner is obliged to take out follow-up liability coverage for the case of termination of business operations for the duration of a minimum of 5 years subsequent to the termination of the agreement between the contracting partner and the insurer.

(3) The contracting partner shall provide WILO with a copy of the liability insurance policy upon request.

## **§ 8 Property rights, patents**

(1) The contracting partner ensures that, in connection with its deliveries, no global third party property rights are infringed, particularly with respect to countries of the European Union and North America where it manufactures or has manufactured its products.

(2) The contracting partner is obliged to indemnify WILO against all claims third parties may assert against WILO for the infringement of property rights as set forth in § 8 para. 1 and shall reimburse WILO for all necessary expenses within the context of such claims.

At any time during as well as after the duration of the business relationship, agreements or assignments, the contracting partner shall indemnify WILO and its customers against all damages and costs (including lost profits, withdrawal from use, down-time, penalties, attorney fees, etc.) incurred by WILO and/or its customers in connection with the use or sales of parts to be delivered by the contracting partner for alleged patent, registered design, copyright, trademark or other property right infringements, regardless of location, and shall immediately reimburse WILO and/or its customers for all ensuing costs and damages without reservations.

In case patent infringement claims are asserted against WILO or its customers, the contracting partner shall be notified thereof, including a request to initiate all measures required to fend off any such claims at its own expenses and support WILO in the defence against such claims. WILO is entitled to request an appropriate safety deposit prior to such proceedings to cover expected expenses and damages.

Should WILO, as a consequence of the assertion of such claims, be prevented from using or selling any of the parts, tools, moulds, plans or other documents or templates to be supplied by the contracting partner and should the contracting partner fail to procure a usage authorisation from the proprietor of the property rights, the contracting partner shall, without delay, provide a suitable replacement that does not infringe any property rights, etc. or, if requested by WILO, shall alter the delivery items in a manner that the property right infringement is rendered obsolete.

The claims mentioned above in § 8 para. 2 apply on behalf of WILO or its customers; the contracting partner is not held liable only to the extent that it is able to render proof that it did not cause the respective impairment at WILO or its customers.

(3) Potential patent and license fees are already comprised in the contracting partner's pricing.

(4) For each case the contracting partner issues declarations concerning the origin of the products, structures, other materials or services, the contracting partner is obliged to grant access to the proof of origin certificates to the customs authorities when required and both provide the relevant information and potentially required confirmations. The contracting partner is obliged to replace any damages caused by the declared origin not being accepted by the relevant authorities as a consequence of faulty certificates or lack of verifiability.

(5) WILO reserves all property rights and/or copyrights in any material or service orders, assignments as well as drawings, illustrations, calculations, descriptions and other documents made available (also electronically) to the contracting partner. Without explicit authorisation by WILO, the contracting partner must not make them available to third parties or publish them, use or reproduce them itself or have them used or reproduced by third parties. Upon request by WILO, it undertakes to return these documents and potential copies to WILO in their entirety when they are no longer required within the scope of its ordinary business activities or if negotiations do not result in the conclusion of an agreement.

(6) All documents WILO makes available to the contracting partner or that are manufactured for the purpose of the agreement remain property of WILO or become property of WILO. The contracting partner undertakes to specify them as WILO property, store them safely and securely, insure them and only use them for the purpose of the agreement. Maintenance and repair (in the event of a damage claim) costs of these documents are borne by the contracting partner alone. The contracting partner shall notify WILO immediately of any significant damages to these documents in writing. Upon request, it is required to return these documents in proper condition to WILO when they are no longer required for fulfilling the agreements concluded with WILO.

(7) By way of complete payment of the individual project and also in case further developments, innovations or (other) services (particularly with respect to creative / design efforts, e.g. marketing consulting, engineering, etc.) concerning performance, material or processes are achieved by the contracting partner or a commissioned third party involving WILO, both parties agree to grant WILO the unreserved and spatially and temporally unlimited right of use of the above also with respect to content. In case this right of use in favour of the contracting partner may not be used independently because of previous patents identified by the contracting partner, the parties shall obtain a mutual agreement concerning this further commercial usability (mutual patent and license agreement).

(8) Reservations of title on the part of the contracting partner only apply to the extent that they refer to WILO's payment obligations for the respective documents or services the contracting partner reserves title in. Expanded or extended reservations of title are inadmissible as a matter of course.

## **§ 9 Spare parts**

(1) The contracting partner is obliged to provide spare parts for the products supplied to WILO for a minimum period of 15 years subsequent to delivery and finished production on the part of WILO. In case a longer period of provision is required or intended, this shall be specified in writing for each particular case.

(2) If the contracting partner intends to terminate the production of spare parts for the products supplied to WILO, it undertakes to notify WILO thereof immediately after the termination decision has been taken and to identify a corresponding alternative spare part. Under the proviso of para. 1, the minimum period between this decision and termination of production is 6 months. In cases the contracting partner fails to notify WILO of the above



circumstances, WILO is entitled to assert any resulting damages and measures required to ensure production supply with alternative materials at the contracting partner's expense.

#### **§ 10 CE marking/declaration of conformity**

(1) The contracting partner expressly declares that the machine or plant or the delivery or service it supplies and operates, respectively is in compliance with the respective current EC Machinery Directive 89/392/EEC including all respective current amending directives as well as their current implementation in national laws (currently: 9<sup>th</sup> ordinance, Equipment Safety Act [GSG]) and the respective standards specified therein (e.g. DIN EN 192/1+2), as well as the respective current Technical Regulations for Safety in the Workplace [TRBS] and the current state of the art.

(2) The EC declaration of conformity or manufacturer declaration is to be submitted together with the detailed technical machine documentation by the contracting partner (either as a hard-copy document or electronically). Furthermore, the CE mark has to be attached to the machine or the plant.

(3) In case no harmonised and no rational standards exist for machinery, plants or parts thereof, the contracting partner shall (unless agreed otherwise beforehand and in writing) always compile a risk analysis at its own expense and risk (exempting WILO) so that functional safety is fulfilled during all operational and environmental circumstances to be expected.

(4) Concerning service and maintenance work required according to the warranty affecting compliance with the requirements of the respective relevant EC guidelines, the contracting partner shall always compile a matrix for each of these EC regulations at its own expense and responsibility (excluding liability on the part of WILO).

(5) The above documents must be enclosed with the contracting partner's invoice and are considered an integral component of the agreement. Invoices shall be paid only subsequent to complete and free-of-defect implementation of the order as well as receipt of all documents and technical documentations. Additional documents required by the Commercial Inspection Authority or professional associations within the scope of the acceptance procedure concerning the machinery or plant are implemented at the contracting partner's expense and responsibility (excluding liability on the part of WILO).

(6) In case the machinery, plants or other deliveries supplied by the contracting partner use or require chemicals, the above specifications also apply with respect to the application and requirements of the respective relevant REACH Regulation [REACH VO] – again exempting WILO and at the expense of the contracting partner.

#### **§ 11 Confidentiality, prohibition of competition**

(1) The contracting partner is obliged to keep confidential and use only for executing the order the order conditions as well as all other information and documents made available for this purpose, particularly if these are commercial or technical in nature or of any other kind (with the exception of publicly available information), namely for a period of at least 10 years after conclusion of contract or the end of the business relationship, the respective later event representing the point of reference. Upon request by WILO, the contracting partner shall immediately return to WILO the respective information and documents once enquiries or orders have been processed.

(2) Without prior written approval by WILO, the contracting partner shall refrain from referencing the business relationship in advertising materials, brochures, etc. and shall not exhibit delivery items manufactured for WILO.

(3) The contracting partner shall bind its contractors in accordance with the above § 10.

(4) The contracting partner (or third parties commissioned by it) is/are free to work for other clients. However, for the duration of the business relationship with WILO and an additional 12 months after termination of the business relationship, the contracting partner must not work for another client and utilise its knowledge and expertise there if it is a competitor of WILO. Moreover, for the same period, it undertakes to refrain from becoming employed by or providing services to any such company or entering into consultancy agreements with such companies or purchasing or becoming an indirect or direct shareholder of such companies. The contracting partner is prohibited to establish a competitor company. The contracting partner shall immediately notify WILO in writing of any activity it undertakes if there is any doubt whether it can be reconciled with its activities for WILO.

#### **§ 12 Transfer**

Without prior written approval by WILO, which shall not be unreasonably withheld, the contracting partner is not authorised to transfer its liabilities arising from the contractual relationship to a third party.

## § 13 Insurance, securities

(1) The contracting partner is responsible for all personal injury or property damage claims asserted by it or a third party commissioned by it that are based on the use of a defective item, structure or service supplied by the contracting partner or a third party commissioned by it and is obliged to indemnify WILO against the ensuing liability in full. If WILO is obliged to perform a recall because of a defect of an item, a structure or a service supplied by the contracting partner vis-à-vis third parties; the contracting partner shall bear all costs associated with the recall.

(2) The contracting partner is obliged to take out an operational and product liability insurance in the amount of at least 10 million EURO at its own expense that, unless agreed otherwise in individual cases, is maintained by the contracting partner for a period of at least 6 years after delivery of the products by the contracting partner and comprises an extended liability coverage period of at least 5 years after termination of the insurance contract. Such operational and product liability insurance of the contracting partner also is to cover what is referred to as extended product liability (e.g. assembly and disassembly costs, examination and sorting costs, machinery clause including control, measurement and regulation technology) and coverage is to be at least 10 million EURO; the insurance is to be maintained for a period of at least 6 years after delivery of the products by the contracting partner and is to comprise an extended liability coverage period of at least 5 years after termination of the insurance contract. Further, the contracting partner is obliged to take out follow-up liability coverage for the case of termination of business operations for the duration of a minimum of 5 years subsequent to the termination of the agreement between the contracting partner and the insurer. In case of a change of insurers, the contracting partner is to provide for seamless insurance coverage. Upon request, the contracting partner shall provide proof of the scope of insurance coverage outlined above. Further claims on the part of WILO remain unaffected.

(3) Moreover, the contracting partner is to insure the materials and other tools provided by WILO or stored on its premises (also for an intermediate period) at its own expense against risks of loss, theft or damage, fire, water, storm, etc. in an appropriate amount.

(4) In order to secure all contractual services, materials or structures by the contracting partner (minimum total amount of the order: 50,000 EURO) shall submit a guarantee (directly enforceable, absolute bank guarantee in an appropriate amount (currency: EURO (€)) on behalf of WILO upon conclusion of contract. This guarantee is to be issued by a large German bank, a public savings bank or by Hermes (or other adequate credit insurance). It has to be a directly enforceable, unconditional guarantee issued upon first request, including a waiver of objection, offsetting or benefit of execution.

## § 14 Final provisions, severability clause

(1) In case of a payment delay, WILO is only liable for past-due interest in the amount of 5 % above the respective default interest rate in accordance with the statutory regulations pursuant to § 247 German Civil Code [BGB] in conjunction with § 352 German Commercial Code [HGB]. Additional interests payable to WILO by the contracting partner (e.g. default interest, § 353 Commercial Code [HGB]) are expressly ruled out according to the present agreement.

(2) The contracting partner is only entitled to set-off rights vis-à-vis WILO in consideration of claims that are either undisputed or have been recognised by declaratory judgment. The contracting partner is only entitled to rights of retention vis-à-vis WILO in consideration of such claims that are either undisputed or have been recognised by declaratory judgment and that arise from the same contractual relationship with the contracting partner. Moreover, the contracting partner is not entitled to only perform outstanding services or deliveries from the product portfolio against advance payment or security deposit if, after conclusion of the framework agreement, it becomes aware of circumstances suitable to diminish WILO's creditworthiness to a significant extent, thus putting at risk a payment of outstanding claims of the contracting partner towards WILO arising from the contractual relationship. Contractual provisions concerning foreign currency debt require a separate written case-to-case agreement. The parties agree to bindingly include a fixed EURO (€) foreign currency exchange rate in such provisions.

(3) Claims of the contracting partner towards WILO may not be sold to third parties or transferred by way of security or invoice.

In exceptional cases, the contracting partner may transfer its rights and obligations arising from the agreement to a third party only if WILO has agreed to this transfer in writing. Approval must not be unreasonably withheld. According to the present provision, third parties are companies not affiliated with the contracting partner within the meaning of § 15 et seq. German Companies Act [AktG].

(4) Any general terms and conditions of the contracting partner shall expressly not apply so that these are contested in particular also if they are submitted to WILO in a confirmation letter or otherwise or if WILO accepts deliveries or services by the contracting partner without expressly refuting the contracting partner's general terms and conditions once again. WILO's Standard Terms and Conditions of Purchase shall apply, exclusively; this shall also apply to all future business relationships between WILO and the contracting partner also if they are not expressly agreed once again.

(5) The following components shall be comprised in the contract – if applicable and unless agreed otherwise – in the following hierarchical order:

- 5.1. The framework agreement between WILO and the contracting partner as well as the supplemental agreements contained in the annexes to the framework agreement
- 5.2. Separately negotiated contract terms provided they were expressly determined between WILO and the contracting partner at conclusion of contract
- 5.3. Order by WILO
- 5.4. The latest applicable minutes of the negotiations
- 5.5. Routing order, logistics agreement or EDI agreement
- 5.6. WILO Standard Terms and Conditions of Purchase
- 5.7. WILO packaging instructions
- 5.8. The relevant, generally recognised technology regulations, particularly the relevant DIN provisions in their applicable version

Other provisions shall expressly not become a component of the agreement, also if WILO does not expressly refute this.

(6) Should individual provisions of this agreement turn out to be invalid or unenforceable, this shall not affect the remaining provisions of the present agreement. The parties to the agreement undertake to replace the invalid or unenforceable provision with a valid or enforceable provision that comes as close to the intent and (economic) purpose of the invalid provision. Otherwise, the statutory regulations shall apply.

#### **§ 15 Place of performance, place of jurisdiction, applicable law**

(1) Unless expressly agreed otherwise in writing, the place of performance concerning all obligations arising from the contractual relationship shall be the place of performance specified by WILO.

(2) Dortmund shall be the place of jurisdiction for all disputes arising from the contractual relationship.

(3) The agreements concluded between WILO and the contracting partner are governed by the law of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods (CISG). The UN CISG shall only exceptionally apply if expressly confirmed in writing by WILO or if required by the law.

(4) Concerning legal disputes between WILO and the contracting partner outside of the territory of the Federal Republic of Germany, the law of the respective country shall apply.

(5) Personal data of the contracting partner are treated in compliance with the Federal Data Protection Act.