



General Terms of Delivery by WINDHOFF Bahn- und Anlagentechnik GmbH, Rheine

Version November 2016

1. General terms and integrity clause

These general terms of delivery ("Terms") by WINDHOFF are exclusive. Customers' general terms of delivery which may deviate, complement or contradict these "Terms" shall be accepted as part of a contract only after written approval by WINDHOFF. This also applies to the terms of business which are referred to in a customer's order confirmation or other statements by the customer. The "Terms" by WINDHOFF also apply if the contract with the ordering party is realized without reservations and with full knowledge of contradictory, complementary or under conditions which deviate from these "Terms."

2. Production documents

- 2.1. Production documents which were handed over to the ordering party must not be made available to third parties except for proof of compliance with pertinent legal directives. Any passing on to third parties for other purposes (particularly for manufacturing products) is strictly forbidden unless there is a written permission by WINDHOFF. Where the ordering party does not need production documents from WINDHOFF any longer, they shall be returned on request. Phrases 1 and 2 also apply to design/production documents by the ordering party. However, these documents may be passed on to third parties which operate as subcontractors for supplies/services.
- 2.2. Where design/production documents are in contradiction, the contracting parties shall discuss and negotiate the items. Specifications agreed upon in unison shall override pertinent information in the ordering party's tendering documents. Binding directives relevant to the awarding of a contract shall not be affected.

3. Execution of works, service, provisions by ordering party

- 3.1. The customer may after prior arrangement with WINDHOFF and in an appropriate manner view and observe the execution of works/supply/service for the contract at the party's expense and within the normal work hours at the production facilities. However, WINDHOFF is not obliged to provide information on confidential corporate matters, and as such WINDHOFF may restrict the visitors' access to specific documents and/or locations.
- 3.2. Items provided by a customer for the contract works shall remain in possession of the ordering party until these items are installed. Where such items constitute a danger potential or where they must be stored in a specific manner, the ordering party must inform WINDHOFF on the relevant requirements before the items arrive at WINDHOFF. Any costs involved with such specific measures, which were not known to WINDHOFF at the time of signing the contract, shall be borne by the ordering party.

4. Reservations, objections, hindrance, Force Majeure

- 4.1. Where a delivery is not possible owing to a case of Force Majeure or due to shortage of raw material, energy or labour or owing to riot, labour dispute, severe disturbances in the transport field for which WINDHOFF cannot be held responsible and which could not be foreseen, WINDHOFF shall not be obliged to deliver the works and/or the service as long as such hindering conditions continue to exist. Delivery dates shall be postponed for the duration of the hindrance. Where such interruption of the service is not acceptable by either of the parties, the affected party may recede from the contract or part of the contract.
- 4.2. WINDHOFF will indicate to the ordering party in writing and in time if it foresees any delay in the delivery of the works which may last for more than one month thereby also indicating the causes for such delay also where they are beyond the control of WINDHOFF as by fault of third parties, by the ordering party or in cases of Force Majeure.



- 4.3. Where WINDHOFF indicates that the ordering party itself is the cause of a delay in delivery/service, the ordering party shall take appropriate measures without any undue delay to remedy any such conditions which could jeopardize the execution of the contract works. The contractual dates will be extended for an appropriate length of time unless WINDHOFF itself is held responsible for the delay, and the ordering party informs WINDHOFF immediately after receiving the initial note of hindrance that it (the ordering party) will object to the extension of contractual delivery and service terms or dates.
- 4.4. Where WINDHOFF experiences additional expenses owing to hindrance/delays caused by the ordering party, these added costs shall be invoiced by WINDHOFF indicating the detailed cost items.
- 4.5. Further consequential measures shall be discussed and agreed by the two parties for the isolated case.

5. Delay

- 5.1. Dates for delivery and service times as defined in the contract are binding. However. Compliance with such times and dates can only be maintained when the ordering party itself meets the agreed demands and provisions by clearing appropriate documents in time, i.e. plans, schedules, etc. and by delivering the specific equipment and/or components/services as agreed and by making the agreed payments as well as by fulfilling other obligations which are defined in the contract or in pertinent supplements. Where these obligations are not complied with in time, the service times and/or delivery dates are postponed for a reasonable time. This does not apply if WINDHOFF is solely responsible for the delay.
- 5.2. Where WINDHOFF has caused a delay, the ordering party may - as far as it can substantiate a resultant loss - request damage compensation in the amount of 0.5% of for each complete week of delay, however, not to exceed 5% of the contract sum for that part of the delivery / service which cannot be put into service due to the delay.
- 5.3. Both claims by the ordering party for damage incurred by delayed service/delivery as well as compensations for failed/delayed delivery/service which exceed the limits according to clause 5.2 shall not be acceptable and are excluded in all cases also in the case of an extended time/date for WINDHOFF. This also applied to clause 11.2 lit. b) to f). Where compelling legal directives are concerned, the ordering party may rescind the contract for the remainder of the works not yet delivered in such cases where WINDHOFF is solely responsible for such delay. This does not imply the need to revert the burden of proof to the disadvantage of the ordering party.
- 5.4. The ordering party is responsible for declaring within one week following the request by WINDHOFF whether it intends to rescind the contract because of the delayed delivery/service or whether it will insist on the execution as was contracted.
- 5.5. Where delivery or supply of the works/service is delayed on request of the ordering party for more than one month, WINDHOFF may claim compensation for storage of 1% per month or part of thereof of the sum for that part of the works/service concerned, not to exceed 10%. Proof/confirmation of actual costs for storage is up to the contracting parties.

6. Price calculation, transport, packaging

- 6.1. Prices are net amounts and are calculated ex-works including standard packaging.
- 6.2. Payments shall be addressed to the WINDHOFF finance department.



7. Suspension for a major cause

Either one of the contracting parties may terminate the contract for a major cause in part or as a whole. A major cause is when one of the parties goes into insolvency or stops its regular payments, not on a temporary scale, or when it is under receivership or bankruptcy proceedings are rejected for lack of assets.

8. Acceptance, deadlines for objections, transfer of risk, title of goods

- 8.1. Supply and delivery of works or service by WINDHOFF are effected against acceptance notes unless the acceptance procedures have been agreed otherwise. The ordering party is not entitled to refuse the delivery/acceptance for reasons of insignificant deficiencies. The fact of delivery and acceptance as such is not affected by the initial refusal nor by a refusal on the part of the ordering party following a new deadline defined by WINDHOFF.
- 8.2. For the delivery § 377 HGB (German trade law) applies. § 377 HGB also applies to service provided for a customer.
- 8.3. Transfer of risk takes place at the time of delivery.
- 8.4. Ownership of the works is passed on to the ordering party when the works/service is paid in full unless other legal or contractual provisions apply.
- 8.5. Where the ordering party is a dealer, he is entitled to sell the works as part of his normal business. In this case, the ordering party cedes its claims against its end customers to WINDHOFF. Nevertheless, the ordering party shall remain entitled to collect payments as long as it has not built up a delay with own payments to WINDHOFF. Where the ordering party itself has fallen behind with its due payments, WINDHOFF shall be entitled to revoke in writing its clearance for the ordering party to sell the ordered works and to collect appropriate payments. In this case, the ordering party is obliged to provide WINDHOFF with all information, records and other filed material which show the customers/end users towards which WINDHOFF may reserve the right for (extended) ownership and thus to permit WINDHOFF to address its claims directly to the customers/end users.

9. Product deficiencies

WINDHOFF shall be liable for product deficiencies as follows:

- 9.1. All parts or deliveries/service shall be corrected, newly delivered or renewed at the discretion of WINDHOFF when a material deficiency arises regardless of the operating hours but within the warranty time frame if this deficiency was present already at the time of the transfer of risk.
- 9.2. Claims for material deficiency can be brought forward within a period of 12 months. This does not apply where the provisions of BGB (German civil law) §§ 438, Sect. 1 No. 2 (building works and building products), 479 (right for recourse) and 634a Sect.1 No.2 (building deficiency) define longer warranty periods, and where personal injuries or other dangers to life and health of persons are attributed to gross negligence on the part of WINDHOFF or WINDHOFF withholding such deficiencies. Legal directives governing the suspension of service, hindrance and resumption of deadlines are not affected.
- 9.3. The ordering party shall inform WINDHOFF on material deficiencies without any delay.
- 9.4. In the case of a complaint, the ordering party may withhold payments to a reasonable extent commensurate with the deficiency reported. However, the ordering party may do so only where the complaint is substantiated and where there is no doubt. Where the complaint was not substantiated, WINDHOFF shall be entitled to demand compensation for the required and unnecessary actions and expenses.



- 9.5. Before any further action, WINDHOFF shall have a chance to effect corrective measures within a reasonable time.
- 9.6. Where such corrective measures are not effective, the ordering party may - regardless of claims according to clause 12 - suspend the contract or reduce the outstanding reimbursement.
- 9.7. Complaints are not substantiated where the deviating execution is negligent, where the operational use is not affected, for normal wear or for damage as a result of faulty or negligent handling and care, excessive stress loads, unsuitable operating media, faults at building works, unsuitable grounds / foundation or other environmental effects which were not mentioned in the contract as well as faults in the software which cannot be reproduced. Where improper or unprofessional changes or modifications or repair work is affected by the ordering party or third parties, possible claims for damage or other complaints shall not be accepted.
- 9.8. Claims by the ordering party for compensation of expenses in respect of its service such as transport, forwarding, material are excluded if they are accrued by relocating the works to a location other than the location for the planned use which WINDHOFF when signing the contract had to assume as the original and final destination.
- 9.9. WINDHOFF shall be liable to compensate claims for faults or damages - unlimited in case of willfulness or gross negligence - in the case of negligence to the amount of the respective order, not to exceed the amount of Euro 1.5 million. Clauses 11.2 lit.b) through f) and 11.3 shall apply accordingly.

10. Confidentiality and disclosure

- 10.1. Either one of the parties may disclose information on (partial) contract volumes or (partial) prices only under the provision that the proven and rightful confidentiality efforts of the other party will not be violated. Press releases of other publications regarding specific orders or projects are permitted after prior clearance through the other party. This also applies to rounded off or estimated data and for comparing percent figures about previous orders or projects.
- 10.2. The parties mutually agree to use all reasonable endeavors to prevent the disqualification of any confidential information or documents and to use such information exclusively for the purpose of this contract, unless agreed otherwise.

11. Other claims for damages

- 11.1. No other claims for damages shall be accepted beyond those mentioned above, regardless of a non-compliance with obligations or of non-authorized actions.
- 11.2. Limits for liabilities do not apply
 - a) for liability due to a breach of substantial contractual provisions,
 - b) for liabilities in line with laws on product liability,
 - c) in the case of wilful intent,
 - d) in the case of gross negligence,
 - e) in the case of personal injuries or threats to life or health,
 - f) in other cases where liability is inevitable.



A claim for damages for non-compliance with substantial contractual provisions, however, shall be limited to a typical claim about a contract, i.e. to foreseeable damages, as long as there is no claim in line with clauses b) through f) above. This does not imply a reversion of proof to the disadvantage of the ordering party.

- 11.3. Where the ordering party may rightfully claim for damages according to clause 11, such claims terminate with the end of the correction period for faults according to clause 9.2. In the case of damage claims about the laws on product liability, the legal terms and dates apply.

12. Invoices, prices, addenda

- 12.1. Each contract (including addenda) shall be invoiced. Down payments, partial payments, initial and final closing payments shall be designated as such, and they shall be numbered consecutively.
- 12.2. The invoices shall show the ordering party, day and abbreviation for the contract, order number, VAT ID number, dispatching station, the address of recipient and material numbers.

13. Terms of payment

- 13.1. Payments are normally effected by transfer to the bank account stated in the WINDHOFF invoice or by cheque.
- 13.2. Deadline for payments is 14 days for the net amount.
- 13.3. Time for the deadline starts with the date of issue as shown on the invoice.
- 13.4. The data of receipt of the invoice amount on the WINDHOFF bank account or receipt of the cheque shall be considered as the date of reimbursement for the invoice amount.

14. Balancing of payments, corporate balancing clause

WINDHOFF is entitled to balance charges due to the ordering party with all charges by WINDHOFF towards the ordering party.

15. General, Salvatoric clause

- 15.1. Place of jurisdiction is - where legally permissible - Rheine. For outline agreements, this court is also competent for litigation on the issue of partial deliveries, regardless of the location of the ordering party.
- 15.2. German law shall apply exclusively and with the exclusion of the UN purchasing rights. For all purposes of litigation or any dispute, the German text of the "Terms" shall apply.
- 15.3. The remaining contract shall remain binding also in the case of any one or more of the provisions should be held void or unacceptable by any court or other authority. This shall not apply, if insisting on the provisions of this contract should constitute an unacceptable hardship for one of the parties.