

**GENERAL TERMS & CONDITIONS  
OF  
WITTUR AUSTRIA GMBH  
FN 400663 k, St. Pölten Regional Court [Landesgericht]  
VAT ID: ATU68115103**

**Version February 2016**

## **1. GENERAL RULES**

- 1.1** The present General Terms and Conditions (GTC) shall apply to all legal transactions between Wittur Austria GmbH, Sowitschstrasse 1, 3270 Scheibbs, and its customers ("**Buyers**").
- 1.2** Any conflicting terms or conditions deviating from the GTC or other restrictions on the part of the Buyer, of any kind whatsoever, shall not become an integral part of the contract except if Wittur Austria GmbH has given its explicit written consent in individual instances. Generally, any deviations from these GTC shall only be effective if they are confirmed by Wittur Austria GmbH in writing.
- 1.3** These GTC shall also apply to future legal transactions with the Buyer, without any reference being made to them again in individual instances.
- 1.4** Oral agreements, declarations, consultations, information, commitments, representations and guarantees will only become binding upon written confirmation by us.
- 1.5** Should these GTC be or become partly ineffective, the effectiveness of the remaining provisions of these GTC or of the underlying contract with the Buyer shall not be affected thereby.

## **2. SCOPE OF SERVICES**

- 2.1** For the scope of our delivery and service obligations, the order confirmation transmitted by us in writing or by fax shall be decisive exclusively, unless the Buyer has objected in writing immediately after receipt of the order confirmation. Any subsequent amendments as well as ancillary agreements shall only be effective if they are confirmed by us in writing or by fax.
- 2.2** We shall reserve rights of ownership and copyrights to our samples, quotations, proposals, drawings and similar information of a physical or immaterial kind - also in electronic form; said material must not be reproduced or made accessible to third parties without our previous written consent.
- 2.3** In case we prepare design drawings, technical calculations etc. for the Buyer, we shall not be liable for the details provided by the Buyer. The latter shall be obliged to check the details provided by it.

- 2.4** The Buyer shall take care, at its own expense, of official approvals and licenses of the facility supplied with our goods. We shall only be obliged to provide the documents prescribed under the law, if any, and/or as required according to the guidelines applicable for elevator construction.

**3. DELIVERY DATES, DELIVERY PERIODS, DELAYED DELIVERY**

- 3.1** Delivery dates and delivery periods shall derive from the agreements made between the Buyer and ourselves.
- 3.2** Our delivery obligation shall be subject to the condition of correct and timely delivery to ourselves, unless we are responsible for delivery to ourselves not being effected correctly or in time. We shall immediately notify the Buyer of any foreseeable delays; the same shall apply if it turns out that the goods are not available. In case of non-availability, we shall reimburse any consideration already paid by the Buyer immediately.
- 3.3** Observation of delivery dates and delivery periods by us presupposes that all commercial and technical matters have been clarified between the Buyer and ourselves in a timely manner, and that the Buyer has met all obligations incumbent upon it in time, e.g. submission of documents, approvals, official certificates and permits to be obtained by the Buyer, the drawing up of letters of credit or making of down payments, as well as any other obligations to collaborate that may be incumbent upon it. If this is not the case, the delivery date shall be postponed or the delivery period extended accordingly. This shall not apply if we are responsible for the delay.
- 3.4** For the rest, observance of delivery dates and delivery periods by us presupposes fulfilment of the Buyer's payment obligations from the respective contract as well as from any other contracts not yet completely settled between the Buyer and ourselves.
- 3.5** The time of dispatch of the goods ex our works shall be decisive for observance of delivery dates and delivery periods. If the Buyer itself arranges for the goods to be picked up or if they are not dispatched in a timely manner without any fault on our part, delivery periods or delivery dates shall be deemed observed upon notification of readiness for dispatch.
- 3.6** If dispatch is delayed for any reasons which the Buyer is responsible for, we shall be entitled to either put the goods in store, have them put in store by the respective manufacturer or store them with a forwarding agent, at the expense and risk of the Buyer in each case. In case the goods are stored with us, the Buyer shall remunerate us, upon expiry of a period of one month after notification of readiness for dispatch, in the amount of 0.5% of the net invoice amount of the goods stored with us after expiry of said period of one month, for each full month of storage - in case of any shorter periods pro rata temporis. The above-mentioned remuneration shall be net plus any statutory VAT. Any costs of a forwarding agent putting the goods in store as well as other costs incurred through storage shall be reimbursed to us by the Buyer, to the extent they are attributable to periods starting upon notification of readiness for dispatch. This notwithstanding, in cases where dispatch is delayed for any reason which the Buyer is

responsible for, we shall be entitled to dispose of the object of delivery in any other way, and supply the Buyer with the goods ordered within a reasonable extended period of time, after granting and unsuccessful expiry of a reasonable period of grace.

**3.7** Events of force majeure shall entitle us to postpone delivery for the duration of the event preventing performance plus a reasonable preparatory period or to rescind the contract with respect to the part not yet performed. The same shall apply if other circumstances exist that are outside our sphere of influence, e.g. restrictions of energy supply, import protections, strikes at any of our suppliers' works and the like; upon the Buyer's request, we shall notify the latter as to whether we will deliver within a reasonable period of time or prefer to rescind the contract with respect to the part not yet performed. If we fail to make a corresponding declaration within a reasonable period, the Buyer shall be entitled to rescind the contract with respect to the part not yet performed.

**3.8** Items 3.4, 3.5 and 3.7 above shall apply accordingly to any period of grace granted to us.

**3.9** Partial deliveries shall be admissible to the extent reasonable for the Buyer.

#### **4. TRANSFER OF RISK, DISPATCH**

**4.1** The risk of accidental loss and accidental deterioration shall transfer to the Buyer upon handover of the goods to the forwarding agent, the carrier or any other person or entity appointed to ship them. This shall also apply if partial deliveries are effected or if we assume the shipping costs, even in case of "freight prepaid" and "carriage paid" deliveries.

**4.2** If dispatch is delayed or omitted due to circumstances that we cannot be made responsible for, the risk shall transfer to the Buyer upon notification of readiness for dispatch. At the Buyer's expense, we shall conclude those insurance policies which the latter explicitly requests in writing.

#### **5. PRICES AND TERMS OF PAYMENT**

**5.1** The respective prices are indicated net plus statutory value-added tax ex our works including loading at the works. Packaging, freight charges, unloading and other shipping costs are not included in the price; they shall be borne by the Buyer.

**5.2** If the cost factors relevant for pricing (e.g. material prices, wages and freight charges) increase up to the time of delivery/performance, we shall be entitled to adjust the prices.

**5.3** The invoice amount shall be payable net in cash immediately after delivery/performance, but no later than within 30 days, counting from the date of the invoice in each case. Payments shall only be considered timely if they are credited to one of our accounts already on the last day of the deadline. Payments shall be initially credited against any unsecured claims.

- 5.4** Payments shall be effected without charges to our paying office. Payment orders, cheques or bills of exchange will only be accepted on account of payment. Any obligation to accept said means of payment shall only exist in case of express, written agreements. Acceptance shall take place at the value date on which we are able to dispose of the respective amount. We reserve the right to return any undiscountable bills of exchange to the Buyer and to demand cash payment. Collection costs and discount charges and all costs incurred upon redemption of the bill or cheque as well as interest shall always be at the expense of the Buyer.
- 5.5** In case payment is delayed, interest and commission fees shall be charged in accordance with the respective bank rates for short-term loans, but at least at a rate of 8% above the respective base rate of Oesterreichische Nationalbank. The Buyer is obliged to reimburse all dunning costs and expenses of collection in addition to the interest on arrears.
- 5.6** We shall also be entitled to submit partial invoices.
- 5.7** The Buyer shall only be entitled to set off against counterclaims if such counterclaims are undisputed or established as final and absolute. If the Buyer is an entrepreneur within the meaning of the UGB (Austrian business code), he shall have a right of retention as well as a right to refuse performance under §§ 471, 1052 ABGB (Austrian civil code) exclusively for undisputed or legally binding counterclaims .
- 5.8** If the Buyer is in default of payment of an invoice, all our other claims shall become payable immediately regardless of any term of payment agreed or, if there is no separate agreement, applicable under these GTC. Should it become clear after conclusion of the contract that our claim for payment is jeopardised by the Buyer's lack of capacity to perform, we shall be entitled to demand payment or the provision of collateral before delivery and to suspend continuation of our work until payment or provision of such collateral. We shall have these rights even if the Buyer is in default of payment with respect to any invoice. If the Buyer fails to effect the requested payment or the provision of collateral until expiry of the reasonable deadline set, we shall be entitled to rescind the contract upon expiry of said deadline and to demand reimbursement of our expenses from the Buyer.

## **6. RETENTION OF TITLE**

- 6.1** The goods delivered shall remain our property until they have been paid in full (reserved goods). If the Buyer is an entrepreneur, the delivered goods shall remain our property until payment in full of all our existing and future claims from our business relationship with the Buyer.
- 6.2** The processing or transformation of reserved goods shall take place within the meaning of §§ 414, 415 ABGB and shall always be effected by the Buyer for us as manufacturers, without any obligation arising therefrom for us. Our title shall continue to exist with respect to the goods so processed or transformed. The processed or transformed goods shall be considered reserved goods.

- 6.3** If reserved goods are processed, mixed or combined with other objects that we do not have any title to, we shall acquire co-ownership of the new good pro rata in the proportion of the invoice value of the reserved goods to the invoice or production value of the other objects used. If our title lapses through any such combination or mixing, the Buyer shall hereby transfer to us co-ownership of the new good or the new inventory in the proportion of the invoice value of the reserved goods to the production value of the new good or to the invoice value of the other objects of the new inventory, and shall keep the new good or the new inventory for us free of charge. Our co-ownership rights shall be deemed reserved goods.
- 6.4** The Buyer shall be entitled to further process the reserved goods, to combine them with real property or movable goods and to resell them if such processing, combination or resale is effected in the course of ordinary business transactions. However, it shall not be permitted to resell said goods if it has previously assigned the resulting claim to any third party.
- 6.5** The Buyer hereby assigns to us the claims accruing to it against the purchaser or against any third parties from the resale of reserved goods, for the purpose of securing all our claims from the business relationship with the Buyer. If the Buyer sells any reserved goods together with other goods not purchased from us, it hereby assigns the claims arising from such resale in the proportion of the invoice value of the reserved goods to the invoice value of the other goods sold. In case of the sale of goods with respect to which we have acquired co-ownership under clause 6.3, the Buyer hereby assigns to us that part of the claim from resale that corresponds to our co-ownership share. We hereby accept said assignments. The claims so assigned shall serve for securing purposes to the same extent as the reserved goods.
- 6.6** The Buyer shall be authorised to collect the claims from resale. We shall be entitled to revoke authorization to collect and to take care of collection of the claims (assigned to us) ourselves, if the Buyer is in default of payment of an invoice payable to us, if an application for the opening of insolvency proceedings regarding the assets of the Buyer is filed, or if it becomes evident after conclusion of the contract that our payment claim under this contract or under any other contracts is jeopardised by the latter's lack of capacity to perform. If we exercise our right of revocation, the Buyer shall notify us, upon request, of the claims so assigned, as well as of the names and addresses of the debtors, the Buyer shall provide all information required for collection, shall hand over copies of the documents required for collection and notify the debtors of the assignment.
- 6.7** The assignment of claims from the resale of reserved goods to third parties shall not be admissible, unless it is an assignment by way of real factoring that is notified to us and in respect of which the factoring proceeds at least correspond to the amount of our secured claims. Our claim shall be due for payment immediately upon the factoring proceeds being credited.
- 6.8** For as long as and to the extent that the retention of title exists, the Buyer must neither pledge nor transfer by way of security any reserved goods without our prior written consent. For as long as the retention of title exists, the Buyer shall make reference to our

title or co-ownership in case of distraints, confiscations or other forms of third-party access and inform us accordingly without delay. In such cases, the Buyer shall indemnify us with respect to all costs associated with eliminating the consequences of such distraint, confiscation or other access as well as to any costs of return transport of the reserved goods and/or to reimburse us for any costs incurred in this context, unless they are borne or reimbursed by third parties.

**6.9** The Buyer shall take out insurance for any objects delivered by us as well as for new items contained in the objects delivered by us as of the time of the risk transferring to it - and/or for any new items containing objects delivered by us as of the earliest possible point in time - against all insurable risks, in particular against transport, fire, theft, water damage and the like, at its own expense for as long as we are owners or co-owners of said objects or new items.

**6.10** Upon request by the Buyer we shall be obliged to release collateral at our discretion, if and to the extent the value of the existing collateral exceeds the secured claims including ancillary claims (charges, interest a.o.) by more than 10% overall.

## **7. CLAIMS FOR DEFECTS**

**7.1** If the contract constitutes a business-related transaction for both parties, the duty of examination and complaint under § 377 UGB shall apply. Defects shall be notified within a reasonable period of seven calendar days in writing.

**7.2** In case of a justified and – provided the prerequisites of the above clause 7.1 are met – timely complaint, we shall remedy the defect at our discretion by either eliminating the defect or by providing an item that is free from defects. Any parts replaced shall become our property.

**7.3** If the Buyer returns any defective goods to us, it shall take care of proper packaging and shipment. To the extent the Buyer is entitled to return the goods, we shall bear the cost of packaging and dispatch incurred in this connection. Upon return shipment, the Buyer shall refer to the contract that the goods pertain to by indicating our order no. or our project no.

**7.4** The Buyer shall be entitled to reduce the compensation according to applicable statutory provisions in case remediation fails or is rejected, or alternatively to rescind the contract. Recourse according to § 933b ABGB shall be excluded.

**7.5** Warranty on our part shall lapse completely and without reservations if

- (a)** the Buyer or any third party has treated, processed or modified the goods delivered by us improperly (in particular in case of inappropriate installation/assembly);
- (b)** defects have occurred due to improper storage;

(c) defects have occurred due to non-observance of our technical instructions for treatment and processing of the goods delivered by us;

(d) our downstream supplier assumes direct warranty vis-à-vis the Buyer.

**7.6** If use of the delivered object results in the violation of any industrial property rights or copyrights, we shall procure the Buyer's right of continued use at our expense or modify the delivered object in such a way (to the extent reasonable for the Buyer) that the industrial property rights or copyrights are no longer violated. If this is not possible or not possible on commercially reasonable terms or within a reasonable period, we shall be entitled to rescind the contract. Moreover, we shall indemnify the Buyer with respect to undisputed claims or claims established as final and absolute on the part of the holders of such industrial property rights or copyrights. However, we shall not be liable to the extent that the Buyer incurs any loss, or to the extent that such loss increases, due to the fact that

(a) the Buyer fails to immediately notify us of any asserted violations of industrial property rights or copyrights,

(b) the Buyer fails to enable us to carry out modifications under this clause 7.6,

(c) the Buyer fails to reasonably support us in defending any claims asserted,

(d) not all measures of defence including extrajudicial settlements are reserved to us,

(e) the legal defect is based on any instruction given by the Buyer, or

(f) the violation of rights was caused by the fact that the Buyer has modified the delivered object without authority to do so or has used the same in any way not complying with the contract.

## **8. LIABILITY**

**8.1** We shall be liable for damages - on any legal grounds whatsoever - only in case of intent or very gross negligence, in case of culpable injury of life, limb and health, in case of defects maliciously concealed by us or whose absence we have guaranteed, and in case of mandatory liability under the product liability act.

**8.2** In case of the culpable violation of essential contractual obligations, we shall also be liable in case of slight negligence, but limited to the loss typical of the contract and reasonably foreseeable at the time of contract conclusion.

## **9. PLACE OF PERFORMANCE, APPLICABLE LAW AND PLACE OF JURISDICTION**

**9.1** The place of performance shall be the domicile of Wittur Austria GmbH in A-3270 Scheibbs.

- 9.2** All contractual relationships based on the present GTC shall be governed by Austrian law excluding the conflict of law rules and the UN-CISG.
- 9.3** All disputes in connection with and resulting from the contractual relationship and the legal relationships between Wittur Austria GmbH and the Buyer shall exclusively be decided upon by the court with subject matter jurisdiction for St. Pölten/Austria, at the discretion of Wittur Austria GmbH also by the materially competent court in whose district the Buyer has its registered domicile, any branch establishment or property.