

# GENERAL TERMS AND CONDITIONS

of F. Willich GmbH + Co KG (hereinafter: F. Willich)

As of: June 2021

## Section 1 Scope of application

1. The following General Terms and Conditions apply, in the version valid upon entering into the respective contract, exclusively to the business relationship between F. Willich and its customers. F. Willich does not recognise different terms and conditions of customers, unless F. Willich has expressly agreed to their validity.
2. The currently valid General Terms and Conditions can be read and downloaded at [www.f-willich.de](http://www.f-willich.de).
3. They shall also apply to future deliveries made and services provided by F. Willich, including any spare parts deliveries, even if they are not expressly agreed upon again.
4. The customer's unconditional acceptance of service/delivery by F. Willich shall also be regarded as an acknowledgement of our GTC by the customer.

## Section 2 Conclusion of the contract

1. Offers from F. Willich are always subject to change, unless expressly agreed otherwise. They merely represent an invitation for the customer to submit their own binding contractual offer. Declarations of acceptance and all orders shall become legally effective only upon express confirmation from F. Willich. This shall also apply to supplements, amendments or ancillary agreements. All details relating to measurements, weights or other technical data are only binding if and to the extent that F. Willich expressly designates them as binding.
2. The documents forming part of the offer, such as illustrations, drawings, or details relating to weights and measurements, are only approximations, unless F. Willich has expressly designated them as binding.
3. F. Willich retains all ownership rights and copyright exploitation rights, without restriction, for all cost estimates, drawings and other documents. Customers must not make these documents available to third parties without the express and prior consent of F. Willich. These documents must be returned to F. Willich if the order is not placed. Any copies of the documents must be destroyed in this case.

## Section 3 Force majeure, right of withdrawal

In the event of force majeure (e.g. war, natural disasters, strike, lock-out, pandemics, official measures in relation to pandemics) making it impossible to fulfil orders on time, or at all, F. Willich has the right to postpone delivery for the duration of this hindrance, but for no longer than 2 months. Both parties have the right to withdraw from the contract in such cases.

## Section 4 Delivery

1. Delivery dates are only binding if expressly confirmed as such by F. Willich. Delivery dates are deemed to have been met if, prior to the deadline, the delivery item has left the factory or F. Willich has indicated that the shipment is ready.
2. If delivery dates which are not expressly designated in writing as "fixed", "binding" or with a similar commonly used term should lapse, the customer can set a reasonable grace period for delivery/service. F. Willich shall only be in default once this grace period lapses.
3. Partial deliveries are permissible insofar as this is reasonable for the customer.
4. Compliance with agreed deadlines for deliveries/services requires the timely receipt of all documents to be provided by the customer, necessary permits and approvals, in particular those pertaining to plans, and compliance with the agreed payment terms (advance payments, for example) and other obligations by the customer. If these requirements are not fulfilled on time, the agreed delivery and service deadlines are extended accordingly; this does not apply if F. Willich is responsible for the delay.

## Section 5 Retention of title/withdrawal/seizures

1. F. Willich shall reserve ownership over all delivered items (hereinafter: reserved goods) until such time as all claims, on whatever legal basis, have been fulfilled, including future or conditional claims from contracts concluded simultaneously or subsequently. This shall also apply if payments are made in respect of specifically designated claims.
2. If there is evidence supporting the assumption of the customer's insolvency or that such insolvency is impending, F. Willich is entitled to withdraw from the contract without notice and to demand surrender of the reserved goods.
3. Treatment and processing of the reserved goods shall be undertaken on behalf of F. Willich as manufacturer within the meaning of Section 950 of the German Civil Code (BGB) without any obligation on the part of F. Willich. The processed goods shall be considered reserved goods within the meaning of point 1. Where the customer processes, combines or mixes the reserved goods with other goods, F. Willich shall be entitled to joint ownership of the new item in the same proportion as that between the invoice value of the reserved goods and the invoice value of the other goods used. If F. Willich's ownership expires as a result of the combination or mixing, the customer shall then assign to F. Willich the ownership rights to the new goods or item to which the customer is entitled in the proportion of the invoice value of the reserved goods, and shall retain them for F. Willich at no charge. The rights of joint ownership arising therefrom shall be considered reserved goods within the meaning of point 1.
4. The customer is only entitled to resell, process, combine or otherwise incorporate the reserved goods with other items in the ordinary course of business and provided that the customer is not in arrears with the payment of the purchase price. Any other use of the reserved goods is impermissible. F. Willich must be notified without delay in the event of third-party seizures or other access to the reserved goods. All costs pertaining to intervention shall be borne by the customer, provided that they cannot be collected from the third party and that the third-party proceedings have been legitimately filed. Should the customer allow their buyer to defer payment of the purchase price, they shall reserve ownership of the reserved goods over the buyer under the same conditions by which F. Willich reserved ownership of the delivery of the reserved goods. However, the customer is not obligated to reserve ownership over claims arising against their buyer in the future. Otherwise, the customer has no authorization for resale.
5. The customer's claims arising from the resale of the reserved goods are hereby assigned to F. Willich. They serve as collateral to the same extent as the reserved goods. The customer is entitled and authorized to resell only when it is ensured that the claims to which the customer is entitled have been assigned to F. Willich.
6. If the customer resells the reserved goods together with other goods not delivered by F. Willich at an overall price, the claim arising from the resale shall be assigned in the amount of the invoice value of the respective reserved goods resold.
7. If the assigned claim is included in a running account, the customer shall assign an amount of the balance equal to the amount of this claim, including the closing balance from the running account, to F. Willich.
8. The customer is entitled to collect assigned claims until such time as F. Willich revokes that entitlement. F. Willich may revoke that entitlement if the customer fails to properly fulfil their payment obligations arising from the business relationship or if it becomes aware of circumstances liable to significantly reduce the customer's creditworthiness. If the requirements for exercising the right of revocation have been met, the customer must, at the request of F. Willich, immediately disclose the assigned claims and their respective debtors, provide all information needed to collect the claims, hand over the associated documentation to F. Willich, and notify the debtor of the assignment. F. Willich is also entitled to notify the debtor of the assignment itself. The customer is not otherwise authorized to assign claims, not even on the basis of collection authorization from F. Willich.

9. If the nominal value (invoiced amount of the goods or nominal amount of the claim rights) of the collateral held by F. Willich exceeds the overall claims secured by more than 10%, F. Willich is obligated, if the customer so requests, to release collateral at the customer's discretion.
10. If F. Willich asserts its right to reserve ownership, this shall only be considered to be withdrawal from the contract if F. Willich expressly designates it as such. The customer's right of ownership over the reserved goods expires if the customer fails to fulfil their obligations arising from this or another contract.

## Section 6 Conditions of payment

1. Invoices from F. Willich are issued on the date of delivery of the goods and are due, without discount, within the deadline for payment specified in the invoice, following receipt of the invoice.
2. Bills of exchange, cheques and other payment bonds are accepted as payment within these terms and conditions only after having been cashed. F. Willich is not obligated to accept bills of exchange.
3. Unless otherwise agreed, prices are quoted ex works from F. Willich's premises (Incoterms 2010: EXW) including standard packaging. All taxes, customs and fees, etc. that apply to deliveries outside Germany shall be borne by the customer.
4. In the event of any default in payment and reasonable doubt in relation to the solvency or creditworthiness of the customer, F. Willich is authorised, without prejudice to its other rights, to demand advance payment for deliveries not yet carried out and immediate payment of all claims arising from the business relationship. F. Willich's obligation to deliver shall be suspended for as long as the customer is in arrears with a due payment.

## Section 7 Installation, further processing

1. Goods sold by F. Willich must be installed professionally, preferably by a specialist workshop.
2. Where goods delivered by F. Willich to customers are to be further processed by the latter (combination, mixing, assembly etc.), F. Willich is only responsible for later defects if the further processing carried out by the customer was expressly declared to be non-hazardous beforehand by F. Willich or if a defect can be traced back to goods sold by F. Willich or to a guarantee explicitly given by F. Willich.

## Section 8 Complaints and defects

1. F. Willich does not undertake any independent guarantee beyond or in addition to the statutory warranty. Anything to the contrary shall apply only if it has been expressly agreed upon. F. Willich is liable for any defects in the delivery, excluding further claims, as follows:
2. Claims pertaining to defects are excluded in respect of only minor deviations from the agreed or, in the absence of any agreement, usual quality, in respect of only minor impairments to usefulness, in respect of natural wear and tear or damages that occur after the transfer of risk due to faulty or negligent use, excessive strain, unsuitable operating materials, deficient construction work, unsuitable foundations or special external influences not provided for in the contract. If improper modifications or repair work are undertaken by the customer or third parties, then equally no claims pertaining to defects may be asserted on the basis of such modifications or repair work or the consequences resulting therefrom.
3. All delivered parts that have a defect are to be remedied or replaced at no cost, at F. Willich's discretion, if and insofar as the cause of the defect already existed before the point in time at which the risk was transferred (supplementary performance).
4. In the event of a justified complaint, the customer must give F. Willich the opportunity to undertake supplementary performance within a reasonable period.
5. If the supplementary performance fails or is not reasonable to the customer or necessary (Section 440 BGB) for the customer because

- a) F. Willich's supplementary performance is definitively rejected,
- b) the supplementary performance was not effected by a contractually agreed date or within a specified period and the customer has, in the contract, linked the continuation of their interest in performance with the latter's timeliness, or
- c) there are special circumstances that justify immediate withdrawal, giving due consideration to the interests of both parties (Section 323(2) BGB),

the customer shall immediately have the right to reduce the purchase price or, at their choosing, to withdraw from the contract and (also additionally, where appropriate) claim damages in lieu of performance or demand reimbursement of futile expenditure.

6. The costs necessary for the remedy, in particular transport, travel, labour and material costs, are borne by F. Willich. This shall not apply if the expenditure increases because, after delivery, the item was brought to a location other than the intended delivery destination, unless this relocation is in accordance with the intended use of the item.
7. If the customer accepts a defective delivery despite being aware of the defect, the customer shall only be entitled to the claims and rights pertaining to the defect if they have expressly reserved these upon acceptance.
8. The statements made in brochures, advertising materials, descriptions, etc. relating to dimensions, weights, performance, electricity consumption, etc. are approximate indications and are not quality specifications. They do not constitute any guarantee as to quality or durability. F. Willich reserves the right to make changes to an extent acceptable to the customer. This shall also apply in respect of design or production changes.
9. Claims for supplementary performance shall become time-barred one year from the statutory commencement of the limitation period. This shall also apply in respect of withdrawal, price reductions and claims for damages. This time limit shall not apply if the law prescribes longer mandatory time limits pursuant to Sections 438(1)(2) (buildings and items for buildings), 479(1) (right of recourse) and 634a(1)(2) (construction defects) BGB, and also shall not apply in the case of intentional acts, fraudulent concealment of the defect, non-compliance with a warranty as to quality or a breach of essential contractual obligations (cardinal obligations). In these cases, the statutory limitation periods shall always apply. Statutory provisions regarding suspension of expiration, suspension and recommencement of the time limits shall remain unaffected.
10. The customer shall only have right of recourse against F. Willich in accordance with Section 478 BGB (recourse of the entrepreneur) provided that the customer has not made any agreements with their buyer that go beyond statutory claims pertaining to defects.
11. Any claims for damage on the part of the customer due to a material defect shall be governed by Section 9.
12. In the event of a commercial sale, the customer shall duly comply with its obligations to inspect the goods and to give notice of defects pursuant to Section 377 of the German Commercial Code (HGB). Defects must be reported in writing within 8 working days following receipt of the goods at the intended destination or, if they are not detectable during a proper examination, within 8 working days following their discovery. If F. Willich negotiates with the customer about a complaint they have raised, this does not, without an explicit reference, represent a tacit waiver on the objection for delayed inspection of the goods or complaint for defects. The same applies for any stated willingness by F. Willich to remedy the defect (or a remedy already performed).

## Section 9 Liability

1. Any claims for damages on the part of the customer, on whatever legal basis, are excluded. This shall not apply in the event of fraudulent concealment of a defect, non-compliance with a warranty as to quality, damage to life and limb or health and/or in cases where F. Willich breaches its obligations intentionally or by gross negligence, or in the event of a breach of obligations the proper fulfilment of which constitutes a condition sine qua non for the contract and on the fulfilment of which the

customer may as a rule rely (essential contractual obligations / cardinal obligations). Claims under the German Product Liability Act shall also remain unaffected by this limitation of liability. This limitation of liability shall apply in equal measure to breaches of obligations by F. Willich's corporate bodies and vicarious agents.

2. The claim for damages for the breach of basic contractual duties is limited to foreseeable damages typical for this type of contract, insofar as intent or gross negligence does not apply, and liability has not been assumed by F. Willich due to damage to life, limb or health.
3. The above limitations of liability apply in equal measure to claims for compensation for futile expenses (Section 284 BGB). A shift in the burden of proof to the detriment of the customer is not associated with the above provisions.

### **Section 10 Offsetting/right of retention**

The customer shall have the right to offset only if the counterclaims that it intends to offset have been legally established or are uncontested by F. Willich. The customer can only claim a right of retention if its counterclaims are based on the same contractual relationship.

### **Section 11 Place of jurisdiction/miscellaneous/validity**

1. If the customer is a trader within the meaning of Section 1 HBG, the place of jurisdiction is the registered office of F. Willich. F. Willich can also choose any other legally permissible place of jurisdiction.
2. These GTC all contracts concluded under their validity are subject to the law of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).
3. Where storage of the customer's data is necessary for the provision of services, F. Willich undertakes to do so in compliance with the applicable data protection requirements (in this regard, see also the privacy policy). The delivery note and invoice simultaneously serve as notice within the meaning of Section 33(1) of the German Federal Data Protection Act.
4. If individual provisions of the above General Terms and Conditions should be or become ineffective, the validity of the remaining clauses shall be unaffected.
5. These GTC are available in a trilingual version. In case of doubt, questions of interpretation or contradictions, the German version shall prevail.