WILKA®
SCHLIESSTECHNIK

General Terms and Conditions of Sale, Delivery and Payment

1. Binding nature of the terms and conditions

1.1 All and any of our goods delivered and services rendered and, if applicable, any guarantees issued independently or by third parties to corporations, corporate bodies under public law or specialised entities under public law shall be subject to the following terms and conditions only. These terms and conditions are considered accepted as soon as the contract is concluded, and not later than by the moment the goods or services are received.
1.2 Any terms and conditions of the Customer that deviate from these terms and conditions shall not be binding on us, even when we do not expressly object to such conditions or we do not expressly point out that we deliver and perform only subject to our terms and conditions.
1.3 Any changes of and amendments to these terms and conditions require our written confirmation. If one of the provisions of these terms and conditions is or becomes invalid, it shall not affect the validity of all of the remaining provisions.
1.4. These General Terms and Conditions of Sale, Delivery and Payment shall not apply to consumers, Sec. 13 BGB (German Civil Code).

2. Scope

2.1. Our offers are without engagement and not binding, unless specified otherwise. They are bids for orders. A legally binding contractual relationship with the Customer is assumed in general only after we have confirmed the order in writing, such confirmation can be made by fax, e-mail or can be computer-generated without a signature, provided that it is certain that we have originated the confirmation. The same shall apply to contractual changes and amendments. Our order confirmation shall be the determining document for the scope, nature and time of delivery or rendering of services.
2.2. Any documents that are related to the offer, such as drawings, data sheets, pictures, schemes, etc. are of secondary importance and shall only be the determining factor for the contractual quality of the delivery or service if expressly specified as being the determining documents. Otherwise such data are average values to be considered approximate.
2.3. We reserve the right to modify constructions. Our catalogues and the data stated on the Internet are being constantly edited. Descriptions, images and drawings contained therein are non-binding and shall neither have the nature of a quality description nor of a declaration of guarantee. Certain qualities of our goods are generally considered assured by us only if we have expressly confirmed this in writing. A guarantee is considered to have been assumed by us only when we have specified a quality as guaranteed in writing.
2.4. Call orders have to be called and taken delivery of in due time and in agreed partial quantities. For call orders without agreed term, production lot quantities and delivery dates, we shall be allowed to demand a binding determination of the delivery data 3 months after the confirmation of the order at the latest. If the Customer fails to meet his obligation to buy within 3 weeks, we shall have the right to determine a last extension of two weeks and, if it expires without result, to withdraw from the contract or to refuse delivery and to claim damages, where additional statutory requirements are met.
2.5. The qualities of the produced sample copies or models become integral part of the contract only if this is expressly agreed in writing. The Customer shall not have the right to utilise and to pass on the sample copies and models.
2.6. Force majeure, collective actions, unrests, official measures, failing to supply by our sub-suppliers and other unforeseeable, unavoidable and serious events shall release the contracting parties from their obligation to perform for the duration of such disruption and in the scope of its effects. The same shall apply to cases when such events occur at a moment when the respective contracting party is behind schedule, unless he has caused such delay deliberately or due to gross negligence. The contracting parties shall be obligated to provide the necessary information without delay within reasonable extent and to adjust their obligations to the changed circumstances in good faith.
2.7. Data related to order processing, including the preparation of a lock plan, shall be registered, processed and saved electronically.

3. Guarantees

3.1. Any and all guarantees issued by us before the conclusion of the contract for the object of delivery and services become irrelevant with the conclusion of the contract, unless they are expressly confirmed in the contract.
3.2. The correctness of guarantees issued by us under the contract shall apply solely to the quality of the product at the time of its delivery.
3.3. The guarantee shall expire in case of modifications or servicing works carried out improperly on our products by the Customer or by third parties and if duplicate keys of third parties are used.

4. Prices and payment conditions / Defence of insecurity

4.1. All prices are quoted in euro ex works or warehouse, excluding packaging, freight and extra charge for quantities below minimum, if applicable. All and any list prices or catalogue prices are without engagement and only of a non-binding nature. The prices shown in our order confirmation shall apply. The prices are generally net prices and are valid for deliveries ex works, excluding the costs of packaging, transportation and insurance (delivery costs). The currently valid VAT and the incurred delivery costs are invoiced additionally and shown separately. In case of delivery terms of more than 4 months we shall invoice the prices that shall be valid on the day of delivery or service.

4.2. Bills and cheques shall only be accepted by agreement and only on account of performance and provided that they are discountable. Discount fees shall be charged starting from the day the invoice amount becomes due. A guarantee for a timely submission of the bill or cheque and for the issuing of a bill protest shall be excluded.
4.3. Our invoices must be paid upon receipt without any deductions, unless otherwise agreed or stipulated in our order confirmation.
4.4. In case of default of payment we shall have the right to charge default interest in the amount of the rate of the overdraft credit as charged by our bank, but not less than 8 percentage points above the current base rate. In addition, after having notified the Customer, we may stop the fulfilment of our obligations under other orders till receipt of payment.
4.5. If we have undisputedly delivered partially defect goods, the Customer shall be nevertheless obligated to pay for the part of goods that is without defect, unless the partial delivery is of no interest to him.
4.6. If payment conditions are not met or if circumstances which, at our diligent discretion of a prudent businessman, provide reasonable doubts as to the Customer's creditworthiness become known or recognisable, including even such facts that already existed during the conclusion of the contract but were not known to us or did not have to be known to us, without prejudice to any further statutory rights, in these cases we shall have the right to stop the processing of current orders or the delivery and to demand advance payments or provision of adequate securities for outstanding deliveries, and, if a reasonable period of time granted for the provision of such securities has expired without a result, to withdraw from the contract, without prejudice to any further statutory rights. The Customer shall be obligated to compensate us for any damages resulting from the non-performance of the contract.
4.7. The Customer shall only have the right to retain or to set off as regards counterclaims that are not contested or that have been established as final, unless such counterclaim is based on a violation of material contractual obligations on our part. The Customer may only exercise a right of retention insofar as his counterclaim is based on the same contractual relationship.

5. Incoming e-mails; obligations in the electronic business communication

We shall only be obligated to retrieve the incoming e-mails once per workday. E-mails coming in from 09.00 am to 5.00 pm are considered received by 5.00 pm, unless an earlier receipt can be proven. E-mails coming in outside these hours shall be considered received by 5.00 pm on the next workday, unless an earlier receipt can be proven.

6. Shipment and insurance

6.1. Unless otherwise agreed in writing, the goods will be shipped by us uninsured at Customer's risk and costs. We reserve the right to choose the transportation route and the means of transportation. At Customer's option we shall take out transport insurance for the shipment; the Customer shall bear the resulting costs. A separate written order by the Customer shall be required for this.
6.2. Goods reported as being ready for shipment have to be taken into charge by the Customer without delay. Otherwise we shall have the right to dispatch them or to store them at Customer's costs and risk at our own option.
6.3. Unless agreed otherwise, we shall choose the means of transportation and the transportation route.
6.4. The risk shall pass to the Customer the moment the goods are handed over to the railway, the freight forwarder, the carrier or the moment the storage began, but not later than the moment the goods leave our factory or warehouse, this shall apply also to cases where we have assumed the delivery of the goods.

7. Packaging

Boxes and crates will be credited at their value charged earlier during the delivery if returned in proper condition and free of transportation charges within 2 months. Cardboard boxes will be charged but not be taken back.

8. Delivery, delivery period, obstacles to delivery

8.1. The agreed delivery period is considered met for our deliveries if the goods are sent or have been collected during this period. If the delivery is delayed for reasons attributable to the Customer, the delivery period is considered to have been met if the notification of readiness for shipment takes place within the agreed period of time. Partial deliveries shall be permitted to a reasonable degree. They shall be invoiced separately. The delivery period begins as soon as our order confirmation has been sent and shall be extended commensurately if the criteria of Paragraph 8.4. (force majeure) are fulfilled.
8.2. If the fulfilment of our delivery obligation becomes completely or partially impossible, is delayed or hindered due to circumstances that cannot be averted using reasonable diligence, we shall have the right to withdraw from the contract or to extend the delivery term adequately by the duration of such hindrance, excluding any claims for damages.
8.3. The delivery period is considered to have been agreed approximately only. It is considered to have been met if the goods have left the works by the agreed deadline or, if shipment is impossible, the readiness for shipment has been notified to the Customer. In case of delay of delivery, a reasonable extension shall be granted. In case of later changes to the contract by the Customer that affect the delivery period, the delivery period may be extended to a reasonable degree. We shall have the right to make partial deliveries and to invoice them separately. If orders are for custom-made products, the Customer has to take the delivery of the ordered amounts as a rule, and to accept excess deliveries or short deliveries of a maximum of 10%. Withdrawal from the contract shall be excluded in any case.
8.4. If, for reasons beyond our control, we do not receive deliveries or services of our sub-suppliers, do not receive them in the correct form or do not receive them in time or if force majeure events occur, we shall inform our Customer in writing in time. In this case we shall be entitled to postpone the delivery for the duration of the hindrance or to withdraw from the contract in its entirety or in parts because of the still unfulfilled part, provided that we have complied with our obligation to inform and have not assumed procurement risk. Equivalent to force majeure are strikes, lock-outs, official interventions, power shortage and shortage of raw materials, transport difficulties not attributable to us, operational hindrances not attributable to us (for example following a fire, water or machine damages) and any other hindrances which, upon objective consideration, were not culpably caused by us.
If a delivery deadline or a delivery term has been agreed with binding effect and if, because of events as specified under Par. 8.4 the agreed delivery deadline or the agreed delivery term is exceeded, the Customer shall also be entitled to withdraw from the contract in regard to its still unfulfilled part after a reasonable extension period has elapsed without results.

9. Complaints, defect claims

9.1. Visible defects have to be reported by the Customer in writing without delay, not later than 12 days, after the provision of the service – also for the part of the delivery that can be used by the Customer – and latent defects have to be reported in writing without delay within the warranty period as specified in Paragraph 13. Defects that are visible at the delivery must also be reported to the transportation company and the recording of the defects by the transportation company has to be initiated. Defect reports must contain a detailed description of a defect. A defect report that fails to comply with the above time limit shall exclude any warranty claims of the Customer. If the quantity and weight defects were already visible at the delivery in accordance with the above inspection obligation, the Customer has to report these defects to the transportation company when receiving the goods and has to have such complaint attested to him in writing. A defect report that fails to comply with the above time limit shall exclude any warranty claims of the Customer.
9.2. At our request the delivered goods have to be returned for examination at our expenses. If manufacturing or material defects are ascertained in the examination, at our option, we may either replace the goods or issue a credit note. If a replacement delivery is not possible and if the Customer refuses to receive a credit note, the Customer may withdraw from the contract or demand price reduction. For articles reworked or changed without our express consent, no obligation to replace shall be applicable to us in connection with such reworking or change. We reserve the right to make any construction modifications where the Customer can reasonably be expected to accept the same.
9.3. In case of defective delivery the Customer at first may only demand subsequent performance as rectification of defects. We reserve the choice of the type of subsequent performance in each case – rectification of defects (rectification) or replacement delivery –, while doing so we shall have the right to change between the methods for each new attempt to rectify the defects. We reserve the right to make any construction modifications where the Customer can reasonably be expected to accept the same.
9.4. The Customer shall only have the right to withdraw from the contract or to reduce the purchase price if the subsequent performance fails or if we fail to rectify the defects within an extension period notified to us in writing by the Customer. The Customer shall also have the above rights if we let an adequate deadline that has been set to us by the Customer in writing with the threat to refuse any further rectification attempts, pass without delivering a replacement or rectifying the defects or if the subsequent performance is impossible or is denied by us.
9.5. In case of rectification of defects we shall bear all the expenses required for the purpose of rectification of defects. A compensation of costs shall be excluded, if the expenses increase because of the goods being brought to another place, unless this corresponds to the normal use of the goods.
9.6. In case of improper modifications or servicing works carried out on our product by the Customer or by third parties and if duplicate keys of third parties are used, our warranty shall be excluded.
9.7. Defect claims may not be based on improper or incorrect use, natural wear and tear, and not on damages caused as a result of faulty or negligent treatment, excessive load, improper processing, faulty combination of parts not designed for this, etc., and as a result of influences that are not assumed according to the contract, unless the damages are attributable to our fault. In this regard we refer to the contents of the relevant standards.
9.8. Defect claims may not be assigned to third parties without our consent.
9.9. In case of improper modifications or servicing works carried out by the Customer or third parties, we shall not be liable for the resulting defects or damages.

10. Return of goods

If the Customer wishes to withdraw from contract without legal reason and if we agree to this, we shall nevertheless charge cancellation fees; even in case that we give our consent, we shall reserve the right to assert damages for lost profit. The goods have to be returned in their original packaging and free of transportation charges and any costs for us to the former place of dispatch. When crediting resalable items in proper packaging we shall deduct 20%. A return of custom-made products shall be excluded (not a stock article!).

11. Software

Wilka software is delivered as a one-off licence; in the relationship with the Customer we are the author as specified by Sec. 69 a – 69 g UrhG (Copyright Law). It is granted for the Customer's own use only.

12. Limitation of liability

12.1. We shall be liable for damages caused by fault irrespective of the legal reason only insofar as the breach of obligation underlying the claim is based on intent or gross negligence. This restriction shall not apply to claims for damages following damages to life, limb or health of a person or breach of a material contractual obligation.
12.2. Insofar as our liability for damages has been excluded or limited, the same shall apply to the personal liability of our employees and of vicarious agents or staff.
12.3. If we have violated a material contractual obligation negligently, but not grossly negligently, or if simple vicarious agents employed by us have violated a material contractual obligation not more heavily than grossly negligently, our liability shall be restricted to the compensation of the typical foreseeable damage. The same shall apply to liability because of initial incapacity, but not for damages to life, limb or health of a person and claims based on the Product Liability Act.
12.4. A damage is considered unforeseeable especially if the Customer becomes liable to pay damages or expenses to third parties and if he failed to exclude his own liability in a way permitted for the general terms and conditions by contractual agreements with third parties.
12.5. Damage in form of lost profit shall only include profit the Customer would have made with our delivery, but not the additional profit the Customer lost in case of a cover transaction because he would be able to use the goods and services used for the cover transaction profitably otherwise.
12.6. If a third party asserts claims against the Customer for which the Customer could make a recourse against us, the Customer has to inform us in detail without delay and to involve us into the negotiations about the claim and to enable us to actively conduct the defence against the claims or to satisfy them in his stead. If the Customer fails to fulfil this obligation, in case of recourse he shall bear the burden of proof of the assertion that his performance to the third party would not be poorer even without our coopera-

tion and that he completely fulfilled his duty to avert, minimise or mitigate loss. The same shall apply to expenses Customer incurs in order to satisfy or to defend against such claims of third parties.
12.7. Statutory rights of recourse of the partner against us shall exist only insofar as the partner did not conclude any agreements with his customer that exceed the statutory defect claims.

13. Period of limitation

13.1. The period of limitation for the right to claim damages for defects pursuant to Paragraph 9 shall be 12 months from the passing of the risk. If the defectiveness affects a delivery used in a construction in accordance with its normal use and thus caused defectiveness of such construction, the period of limitation shall be two years from the passing of the risk. Sentence 1 and 2 shall not apply if the defects have been concealed fraudulently or if the intended last user of the delivery is a consumer.
13.2. A suspension of the period of limitation for claims asserted against us shall only be caused by negotiations about the claim if our contractual obligation in question is undisputed, has been acknowledged in writing or ascertained in a final decision.

14. Retention of title

14.1. We shall retain title in any goods and systems delivered by us (hereinafter together referred to as "*Reserved Goods*"*)* until all of our accounts receivable from the business relationship with the Customer, including any future claims from contracts concluded later, have been paid. This shall also apply to a balance in our favour if individual or all accounts payable are included in a revolving account (account current) and the balance has been drawn.
14.2. The Customer has to insure the Reserved Goods sufficiently, in particular against fire and theft. Any claims against the insurance from a damage event related to the Reserved Goods are already now hereby assigned to us in the amount of the value of the Reserved Goods.
14.3. The Customer has the right to resell the delivered goods in the ordinary course of business. Other forms of disposal, in particular pledging or granting of title in the property as collateral, shall not be permitted. If the Reserved Goods are not paid immediately by the third party buyer when sold to him, the Customer shall be obligated to resell them only with the retention of title. The right to resell the Reserved Goods shall not apply by implication, if the Customer stops his payment or if the Customer delays his payment to us.
14.4. Already now the Customer hereby assigns to us all of his claims against an ultimate Customer or a third party, including securities and ancillary rights he shall accrue from the resale of the Reserved Goods or in connection with it. He may not conclude an agreement with his buyers that would exclude or our affect rights in any way or that would nullify the assignment of the claims in advance. If the Reserved Goods are sold together with other goods, the claim against the third-party buyer is considered assigned to us in the amount of the delivery price agreed between us and the Customer, unless individual amounts for individual goods can be seen in the invoice.
14.5. The Customer shall be entitled to collect the debts assigned to us in regard to the sold Reserved Goods until we revoke this right, such revocation shall be permitted at any time. Upon our request, he shall be obligated to provide to us the information and documents required for the collection of the assigned debt and, unless we do so ourselves, to inform his buyers immediately about the assignment to us.
14.6. If the Customer includes debt claims from resale of Reserved Goods into an account current existing with his buyers, he shall already now assign to us the recognised balance in his favour in the amount that corresponds to the total amount of receivables from the sale of our Reserved Goods included in the account current.
14.7. If the Customer has already assigned to third parties debt claims from the resale of goods delivered or to be delivered by us, in particular based on recourse or non-recourse factoring, or if he entered into other agreements that could affect our present or future security interests pursuant to Paragraph 10, he shall inform us immediately. In case of non-recourse factoring we shall have the right to withdraw from the contract and to demand return of the goods already delivered; The same shall apply in case of recourse factoring, if, according to the agreement with the factor, the Customer may not freely dispose of the purchase price of the debt claim.
14.8. In case of conduct contrary to the terms of the contract, in particular in case of delayed payment, we shall be entitled to take back all of the Reserved Goods, without having to withdraw from the contract first; in this case the Customer shall be obligated to surrender the goods by implication, unless he is responsible for a minor breach of duty only. We may enter the Customer's business premises at any time during the usual business hours to determine the stock of goods delivered by us. Taking back of the Reserved Goods constitutes a withdrawal from the contract only if we expressly state so in writing or if this is prescribed by the mandatory statutory provisions. The Customer must notify us immediately in writing of any third-party attachments of the Reserved Goods or of debt claims assigned to us.
14.9. If the value of the securities we are entitled to in accordance with the above provisions exceeds the secured claims by a total of more than 10%, we shall be obliged to release securities at our option at the Customer's request insofar.

15. Confidentiality

15.1. All business or technical information whatever provided by us, including features of items or documents to be delivered, if applicable, and other know-how and experience shall be kept secret and may be disclosed only to persons within the Customer's own company who have to be involved necessarily into their processing for the purpose of delivery to the Customer and who shall be subject to the same obligation to secrecy; they remain our property exclusively. Without our prior consent in writing such information may not be duplicated or used commercially.
15.2. The confidentiality obligation shall not apply to information that is proved to

- be known to the public already at the time of its disclosure,
- have become known after its disclosure without the Customer's fault,
- after its disclosure by us, have been disclosed to the Customer by third party in a legally permitted way and without any restrictions as to its confidentiality or use.

The confidentiality obligation shall expire two years after the end of the contractual relationship between us and the Customer.
15.3. Any information provided by us (including copies or records made, if applicable) and objects provided on a loan basis have to be returned to us or destroyed immediately and completely at our request. The destruction has to be confirmed to us in writing. We reserve all the rights as regards such information (including copyright and the right to exercise the industrial property rights, such as

patents, utility models, trademark protection, etc.). Insofar as such information was provided to us by third parties, this legal reservation shall also apply in favour of such third parties.
15.4. Drawings, models, templates, samples and similar objects may not be handed over or made otherwise available to unauthorised third parties. Copying of such objects is only permitted within the scope of the operational requirements and subject to the copyright regulation.
15.5. The contract parties may refer to their business relationship in their advertising only with previous written consent of the other party.

16. Institution of insolvency or composition proceedings; stoppage of payment

16.1. If the Customer files for institution of insolvency or composition proceedings or if he stops his payments not based on his lawful retention right or other rights, we shall be entitled to withdraw from the contract at any time or to make the delivery of the purchased goods subject to the prior fulfilment of the payment obligation. If the purchased goods have already been delivered, the purchase price shall become due immediately in the specified cases. We shall also be entitled to demand the return of the purchased price in the specified cases and to retain it until the complete payment of the purchase price.
16.2. The provisions of Par. 16.1. shall apply also if we have accepted cheques or bills on account of payment and the drawee or payer files for institution of insolvency or composition proceedings or stops his payments.

17. Samples and manufacturing equipment

17.1. The production costs for samples and manufacturing equipment (tools, forms, templates etc.) shall be invoiced separately from the goods to be delivered, unless agreed otherwise. The same shall apply to manufacturing equipment that has to be replaced as a result of wear and tear.
17.2. The costs of servicing and proper storage and the risk of damage or destruction of the manufacturing equipment shall be borne by us.
17.3. If, during the period of sample or manufacturing equipment production, the partner suspends or terminates the cooperation, any production costs incurred until then shall be borne by him.
17.4. By paying parts of the costs for tools the Customer shall acquire no title to these tools, they remain our property and in our possession. We undertake to retain the tools 1 year after the last delivery for the Customer. If the Customer informs us within this period of time that orders will be made within another year, the term of storage shall be extended by another year. After this period of time expires, we shall have the right to freely dispose of the tools. We reserve the right to charge the incurred expenses as follows for orders cancelled during their development stage or during the initial period: before the approval of the samples – the incurred costs for the initial tooling, after the approval of the samples, depending on the amount of the expected monthly requirements, the incurred costs for the entire range of serial tools, special-line equipment and training. Tools produced and invoiced as above shall remain available for inspection for 4 weeks and shall be destroyed after this period. The elaborated technical plans and engineering drawings of the tools shall not be subject to the obligation of presentation, in order to protect the applied techniques. However, the buyer may acquire the tools by paying the complete price.

18. Miscellaneous

18.1. The law of the Federal Republic of Germany shall apply exclusively, unless agreed otherwise. The application of the UN Convention on Contracts for the International Sale of Goods (CSIG) shall be excluded.
18.2. Place of performance shall be our place of business.
18.3. Place of jurisdiction shall be Düsseldorf, however, we shall have the right to bring a legal action against the Supplier also at his place of general jurisdiction.
18.4. Invalidity of individual provisions shall not affect the validity of the remaining provisions. The contracting parties shall replace the invalid provision by a provision that has the equal economic effect. The same shall apply in case of gaps.
18.5. The company does not agree to participate in dispute settlement proceedings before consumer arbitration bodies in terms of sec. 36, para. 1 VSBG (German consumer dispute settlement law). However, the possibility of dispute settlement through a consumer arbitration body in the context of actual disputes with the consent of both parties shall remain unaffected (sec. 37 VSBG).