

### **§ 1 General**

Solely the following conditions of purchase apply to contracts entered into by Wendt-Noise Control GmbH in the capacity of Buyer and the Supplier. We shall not acknowledge the Supplier's conditions of purchase to the contrary or those that differ from our conditions unless we had expressly approved of their validity in writing. Our conditions of purchase also apply if we unconditionally accept the Supplier's delivery although we are aware of the Supplier's conditions of purchase that are contrary to or vary from our conditions of purchase. Our conditions of purchase apply, as stated in the respective valid version, automatically to all future business transactions entered into with the Supplier.

### **§ 2 Entering into a contract**

Our enquiries are non-binding at all times.

The supplier is obliged to return the order confirmation enclosed with the order within 5 working days.

Amendments must be made in writing in this document.

Confirmations of order outside this template are not accepted.

For direct purchases of construction sites, the special agreements previously entered shall apply. Subsequent amendments and / or supplementation of the contract require the written agreement between the Buyer and the Supplier in order to be deemed valid.

### **§ 3 Prices**

The prices stated in the order are maximum prices and are binding. We shall not acknowledge the Supplier's price escalator clauses. The prices are to be understood as free delivery to the receiving point and include customs, sales, packaging and freight costs as well as merchandise turnover and shipping document stamps. Value added tax is to be stated separately in the invoice. The Supplier undertakes to inform us in writing of any price reduction that it implements (regarding changed market circumstances etc.) during the term of the contract. Following our written confirmation the new price shall become an element of the contract.

### **§ 4 Delivery period**

The delivery dates indicated in the order or in the call-up are always binding and strictly adhered to by the supplier. The receipt of the goods by us or by the receiving office designated by us shall be decisive for compliance with the delivery date or the delivery period. In the event of a delay in delivery, we are entitled to the statutory claims. In addition, we are entitled to charge a penalty. It is 0,5% for each starting day of delay, but a maximum of 10% (binding in case of exceeding 15 working days) of the total order value. For documents, a one-off fee of € 500 and an additional daily fee of € 150 will be charged. If the supplier does not prove that the damage is less. We reserve the right to make further legal claims. The supplier is obliged to notify us in writing without delay if circumstances arise or become apparent to him, which show that the agreed delivery dates cannot be met. At the same time, the new delivery date is to be communicated. Our consent to the new delivery date does not affect our claims due to the delay in delivery. In the event of a delay in delivery (for example, in case of force majeure) which is not the fault of the supplier, we shall be entitled, in the event of fruitless expiration of a reasonable period of grace set by the Supplier.

### **§ 5 Cancellation**

We may cancel the order at any time in writing prior to hand-over of the goods. In such a case the Supplier shall be entitled to assert its claim for remuneration of its services rendered to date and the proven proportionate profit with consideration given to savings that may apply. If an application for the institution of insolvency proceedings regarding the Supplier's assets is filed by the Supplier or one of its creditors, we may, at our discretion and irrespective of our other statutory or contractual rights, withdraw from the contract and/or enter into the Supplier's contracts with its subcontractors.

### **§ 6 Delivery/ passing of risk**

Risk shall pass to us only once the goods have been offloaded at the respective place of performance. The point of receipt stated in our order is deemed the place of performance for the delivery. A delivery note/ other proof of performance is to be handed over there at least in duplicate. Remuneration shall only be paid for the packaging in

the case of an express agreement. The Supplier guarantees that its deliveries and/ or services are not subject to any export restrictions whatsoever. Advice of dispatch, in each case in triplicate, with details of the gross and net weight etc. is to be forwarded to us prior to the shipping date. An invoice does not apply as advice of dispatch.

### **§ 7 Warranty**

In view of the special features of the system transaction, an inspection is only to be conducted and, if applicable, appropriate notification of defects is to be provided following installation and commissioning of the deliveries and/ or rendering of services. The agreed quantities are to be adhered to precisely in the event of partial deliveries too. However, in the case of mass goods, a surplus delivery of up to 3 % of the quantity stated in the order is permitted. The Supplier guarantees, in respect of all the deliveries it provides and/ or the services it renders, to adhere to pertinent provisions of valid DIN or EN or ISO norms and standards, legal provisions, requirements and guidelines issued by authorities, regulations for the prevention of accidents issued by trade associations and other provisions of trade associations that apply in the Federal Republic of Germany, the country of origin and in the country in which the system is located or is to be set up and for which the deliveries and/ or services are intended. We are entitled to assert statutory warranty claims for defects without restrictions. Above all, we are entitled to request, at our discretion, that the Supplier rectify a defect or supply a new item. In such a case, the Supplier undertakes to carry all costs that are required to rectify a defect or supply a new item. All measures involving the rectification of defects or supply of a new item are likewise governed by the provisions of these General Conditions of Purchase in respect of the Supplier's warranty. An obligation to inspect and provide notification of defects on our part is excluded in respect of attempts to provide subsequent improvement.

We are entitled to rectify the defects at the Supplier's cost in the event of imminent danger or if particular urgency is required in that respect. All costs and incidental costs in this respect shall be borne by the Supplier. Incidental costs are all costs incurred in conjunction with rectifying a defect/ supplying a new item (e.g. transport/ assembly/ infrastructure and other costs and customs duties). Claims for damages are expressly reserved. This also applies to claims for damages as a result of non-performance.

In respect of the subsequently improved parts or those supplied as new items, the warranty period shall commence once they are commissioned, while in respect of subsequently improved services or newly rendered services it shall commence once they have been rendered in full. The Supplier's period of limitation regarding the warranty shall be suspended as long as the Supplier has not rejected our claims in writing following notification of defects. The warranty period shall end at the earliest 6 months following such a rejection.

In the event of withdrawal, we shall be entitled to free use of the Supplier's service up until a replacement is ready for operation on site; at the most, however, for the period of 2 years from the written declaration of withdrawal. The Supplier shall be entitled to retain the price paid by us for that period. At our request, the Supplier is to restore the condition that existed beforehand as part of taking back its deliveries and/or services. The warranty period shall expire after 8,000 operating hours, at the earliest 2 years following the final acceptance by the Buyer-Customer of the entire system ordered by us insofar as a longer specific order or material warranty period does not apply. If the supplied goods or service are used in a building structure, our warranty claims against the Supplier shall fall under the statute of limitations 5 years following delivery of the goods or rendering of the service. The Supplier shall also provide the same guarantee for the parts supplied by its subcontractors. On request, subcontractors are to be stated by name.

### **§ 8 Liability and other claims**

The Supplier undertakes, as part of the product liability or in the case of own action or failure to take action on the part of its vicarious agents that gives rise to third-party damage, to render us exempt from all statutory claims for damages by the aggrieved party at the

first request. In this respect the Supplier also undertakes, in accordance with Sections 683, 670 BGB<sup>1</sup>, to reimburse possible expenses resulting from or in conjunction with a call-back campaign conducted by us. We shall inform the Supplier – if possible and acceptable – of the content and scope of the call-back campaigns that are to be carried out, and give the Supplier the opportunity to comment.

The Supplier shall be liable to us for all personal, material and pecuniary damage caused as a result of the violation of its contractual obligations or tortious acts on its part or on the part of its vicarious agents. The Supplier's liability includes damage that we sustain directly or as a result of third-party claims including if such damage occurs following completion of the work.

We shall not be liable whatsoever to the Supplier or the personnel it deploys unless we act intentionally or as a result of gross negligence, or damage results from the loss of life, physical injury or detrimental effects on health.

Liability for indirect damage such as the loss of expected profits or other pecuniary damage is excluded insofar as we are not accused of intent.

In any case, our liability, irrespective on whichever legal grounds it is based, is limited at most to twice the amount of the respective individual contract. This limitation does not apply to liability in accordance with the product liability act.

The Supplier is to furnish proof of the existence of a third-party liability insurance policy with minimum cover of € 2,500,000.00 for personal and material damage for each case of damage (including cover abroad if necessary).

#### **§ 9 Proprietary rights/ documents/ secrecy**

The Supplier guarantees that no third-party rights shall be violated in conjunction with its delivery and/or service. If a third party brings an action against us in this respect, the Supplier undertakes to render us exempt from such claims at the first written request. We are not entitled to enter into any kind of agreement with such a third party - without approval by the supplier - and in particular we may not enter into a composition agreement. The supplier's obligation to render us exempt applies to all expenses that we incur and damage that we sustain as a result of or in conjunction with the claim brought against us by a third party. We are entitled to obtain a license to use the affected deliveries and/ or services of the beneficiary at the Supplier's cost. Our approval regarding drawings, calculations and other technical documents does not affect the Supplier's sole responsibility for its deliveries and/or services. The drawings made in accordance with our details are to additionally include our letterhead and legal notice in accordance with our requirements and to our benefit. We reserve ownership and copyrights to diagrams, drawings, calculations and other documents. They may not be made available to third parties without our express, written approval. They are to be used exclusively for the production on the basis of our order. Once the order has been processed, they are to be returned to us on request in full, including copies that have been made. The Supplier shall furthermore maintain secrecy in dealings with third-parties regarding all operational procedures, facilities and systems etc. at our premises and that of our customers of which it gains knowledge in conjunction with its activity for us and following submission of the respective offer or completing the respective order. The Supplier shall place its vicarious agents under corresponding obligations.

#### **§ 10 Models/ Drawings/ static calculation**

If the Supplier create models/ drawings / static calculations at our expense, they shall they become our property, at the latest, with payment. These documents as well as any documents provided by us are kept free of charge and carefully by the supplier until they are retrieved by us and insured as a third-party property. Use for or through others is only permitted with our written consent

#### **§ 11 Payments**

Invoices are to be sent by post to the address of our headquarters in Frankenthal/ Palatinate or by e-mail "[Rechnungseingang@wendt-noise-control.de](mailto:Rechnungseingang@wendt-noise-control.de)". Invoices with no data are considered as not received and therefore cannot be further processed. Only deliveries/ services of an order shall be charged for each invoice. If any deficiencies are discovered in the deliveries and/ or services for which the supplier is liable, we are entitled to retain a corresponding part of the price until the defects are remedied and, if necessary, to offset the claims due to the defect. Payments are made by check or bank transfer after delivery and invoice receipt. Basically, the terms of payment laid down in the order are primarily valid. If no settlement of the payment objective has been made, the provision 45 days with 3% discount and within 60 days without deduction is valid.

The term of payment begins with the receipt of the invoice. From an order value of € 50,000 per order, we reserve the right to retain a security retention of 5% of the order sum over 12 months. Payments shall be made in any case subject to verification of the delivery or service at the construction or other receiving point. Provision of services prior to agree upon deadlines or before the expiry of agreed deadlines does not affect the ability to pay, but entitles us to a performance rejection. The regulation of invoices does not mean the acknowledgment of proper delivery or performance. In particular, the assertion of our legal and contractual rights against the supplier is not excluded. The place of performance for the payments is Frankenthal/ Pfalz. The assignment of claims against us arising from or in connection with these terms of purchase and / or the individual contract is only possible with our prior written consent.

#### **§ 12 Data protection**

In respect of the German Data Protection Act we hereby draw attention to the fact that we process the data of our business partners that are required as part of the business relationship.

#### **§ 13 Final provisions**

All the Supplier's claims and rights against us shall fall under the statute of limitations at the latest one year from the statutory start of the period of limitation insofar as a longer limitation period does not apply by law. The Supplier may neither assign nor pledge claims and rights resulting from the order without our prior, written approval. In the event that individual provisions are or become invalid, void or prove to contain loopholes, this shall not affect the validity of the other provisions. An invalid or void provision shall be replaced by a regulation or a loophole shall be filled by a provision that comes closest to achieving the economic purpose intended by way of the invalid or void provision. The substantive law of the Federal Republic of Germany shall apply to a contract that has been entered into in full or in part based on these provisions. Application of the United Nations Convention on Contracts for the International Sale of Goods is excluded. Frankenthal/ Palatinate is deemed the place of jurisdiction for all legal disputes resulting from the contract. We are entitled to bring legal action at any other place of jurisdiction that applies to the Supplier. In the event of variations as a result of translations of these conditions, or parts thereof, solely the German version shall be legally valid.

**Wendt-Noise Control GmbH  
Beindersheimer Str. 79  
D-67227 Frankenthal**

**July 2017**

<sup>1</sup> German Civil Code