



## General Terms & Conditions of Sale

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### 1. TERMS APPLICABLE

The General Terms and Conditions of Sale listed below, which have been brought to the buyer's attention ("Buyer") before the formation of the sale contract, are the exclusive terms and conditions applicable to quotations made and order confirmations issued by WiCa Wire & Cable Machinery GmbH ("Seller") for the sales of products, equipment and associated parts and/or services relating thereto ("Products"). Buyer and Seller may be referred to, collectively, as "the parties". Any of Buyer's terms and conditions, either included in Buyer's general terms and conditions of purchase or elsewhere, that are in addition to or different from those contained herein, which are not separately agreed to by Seller in writing, are hereby expressly waived by Buyer, objected to by Seller and shall be of no effect, irrespective of the time when Buyer's terms and conditions might have been received by Seller. The term "Agreement" as used herein means collectively (a) the Seller's quotation, (b) the Buyer's purchase order expressly accepted by the Seller and (c) the Seller's order confirmation, together with any attachment hereto, any documents expressly incorporated by reference, and these General Terms and Conditions of Sale. The Agreement shall not enter into force until all the following conditions, as applicable, shall have been met: (i) issuance of the purchase order by Buyer; (ii) confirmation of the purchase order by Seller; (iii) receipt of agreed down-payment at Seller's bank account; (v) if Letter of Credit ("L/C") has been agreed, confirmation by Seller's bank of Buyer L/C opening.

### 2. DELIVERY OR PERFORMANCE

Delivery or performance dates are good faith estimates and do not mean that "time is of the essence." Buyer's failure to promptly make advance or interim payments, supply technical information, drawings and approvals will result in a commensurate delay in delivery or performance. Upon and after delivery, risk of loss or damage to the Products shall be Buyer's. Delivery of the Products hereunder will be made on the terms agreed to by the parties as set forth in the Agreement, according to INCOTERMS ICC 2010 edition. If not otherwise specified the General Terms of Delivery of the Association of Austrian Machinery and Steel Construction Industries are valid.

### 3. WARRANTY

(1) Product Warranty. Seller warrants to Buyer that the Products manufactured by it will be delivered free from defects in material (in case Seller provides the material) and from workmanship making it unsuitable for use. This warranty shall commence upon delivery of the Products and shall expire on the earlier to occur of 12 months from initial operation of the Products and 18 months from delivery thereof (the "Warranty Period") except for any other warranty period set out in the particular conditions of Seller's quotation. If during the Warranty Period Buyer discovers a defect in material or workmanship of a Product and gives Seller written notice thereof within 10 days of such discovery, Seller will, at its option, either deliver a replacement part to Buyer, on the same terms as the original delivery was made, according to INCOTERMS ICC 2010 edition or repair the defect in place. Any repair or replacement part furnished pursuant to this warranty are warranted against defects in material and workmanship for one period of 12 months from completion of such repair or replacement, with no further extension. Seller will have no warranty obligations for the Products



under this Article 3(1): (i) if the Products have not been operated and maintained in accordance with generally approved industry practice and with Seller's specific written instructions; (ii) if the Products are used in connection with any mixture or substance or operating condition other than that for which they were designed; (iii) if Buyer fails to give Seller such written 10 day notice; (iv) if the Products are repaired by someone acting on behalf of a company other than Seller or have been intentionally or accidentally damaged; (v) for corrosion, erosion, ordinary wear and tear or in respect of any parts which by their nature are exposed to severe wear and tear or are considered expendable; or (vi) for expenses incurred for work in connection with the removal of the defective articles and reinstallation following repair or replacement.

(2) Seller further warrants to Buyer that upon delivery, the Products manufactured by it will be free of any liens or encumbrances. If there are any such liens or encumbrances, Seller will cause them to be discharged promptly after notification from Buyer of their existence.

(3) THE EXPRESS WARRANTIES SELLER MAKES IN THIS PARAGRAPH 3 ARE THE ONLY WARRANTIES IT WILL MAKE. THERE ARE NO OTHER WARRANTIES, WHETHER STATUTORY, ORAL, EXPRESS OR IMPLIED. IN PARTICULAR, THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(4) The remedies provided in Articles 3(1) and 3(2) are Buyer's exclusive remedy for breach of warranty.

(5) With respect to any Product or part thereof not manufactured by Seller, Seller shall pass on to Buyer only those warranties made to Seller by the manufacturer of such Product or part of Product which are capable of being so passed on.

## 4. LIMITATION OF LIABILITY

Notwithstanding any other provision in this Agreement or elsewhere, the following limitations of liability shall apply:

(1) In no event, whether based on contract, tort (including negligence), strict liability or otherwise, shall Seller, its officers, directors, employees, subcontractors, suppliers or affiliated companies be liable to Buyer or any third party (a) for loss of profits or anticipated profits, revenue or business opportunity, loss of production, loss of use, loss of goodwill, loss arising from business interruption, loss of anticipated savings or wasted overheads, loss by reason of shutdown of facilities or inability to operate any facility at full capacity, or cost of obtaining other means for performing the functions performed by the Products, loss of contracts, whether current or future, claims of customers, cost of money or loss of use of capital, increased capital or financing in each case whether or not foreseeable, or for any fines or penalties or damages (liquidated or otherwise) payable under agreements other than this Agreement and (b) for any indirect, special, incidental, punitive, exemplary, aggravated, nominal or consequential damages of any nature.

(2) The aggregate liability of Seller, its officers, directors, employees, subcontractors, suppliers or affiliated companies, for all claims of any kind for any loss, damage, indemnity or expense resulting from, arising out of or connected with the Products or this Agreement or from the performance or breach thereof, together with the cost of performing make good obligations to pass performance tests, if applicable, shall in no event exceed 5% of the Agreement price.

(3) The limitations and exclusions of liability set forth in this Article 4 shall take precedence over any other provision, set out in this Agreement or elsewhere, and shall apply whether the claim of liability



is based on contract, warranty, tort (including negligence), strict liability, indemnity, or otherwise. The remedies provided in this Agreement are Buyer's exclusive remedies.

(4) Buyer shall not be entitled to seek liability from Seller, Seller's officers, directors, employees, subcontractors, suppliers or affiliated companies, resulting from, arising out of or connected with the Products or this Agreement or other enforceable document, from the performance or breach thereof after twelve (12) months from the expiration date of the warranty period stipulated in Article 3 here above.

(5) In no event shall Seller be liable for any loss or damage whatsoever arising from its failure to discover or repair latent defects or defects inherent in the design of Products (unless such discovery or repair is normally discoverable by tests expressly specified in the scope of work under this Agreement) or caused by the use of Product by the Buyer against the advice of Seller. If Seller furnishes Buyer with advice or assistance concerning any products or systems that is not required pursuant to the Agreement, the furnishing of such advice or assistance shall not be subject to any liability whether in contract, indemnity, warranty, tort (including negligence), strict liability or otherwise.

## 5. RIGHT TO MODIFICATION

(1) The Seller reserves the right to modify or improve the design or manufacture of machinery and equipment described here in and to alter specifications accordingly without prior notice.

(2) The Seller shall be eligible for extension of time and/or cost compensation for events, such as - site risks, unforeseen conditions, Buyer's default, change in facilities, force majeure, change in law and regulation compared to the laws in regulation applicable at the submission date of the Seller's offer or any reasons not attributable to the Seller.

## 6. TAXES

Seller's prices do not include any sales, use, excise or other taxes (including but not limited to withholding taxes). In addition to the price specified herein, the amount of any present or future sales, use, excise or other tax applicable (including but not limited to withholding taxes) to the sale or use of the Products shall be billed to and paid by Buyer unless Buyer provides to Seller a tax-exemption certificate acceptable to the relevant taxing authorities. If any taxes have to be withheld by law from the contract price, the Buyer shall be entitled to do so provided the contract price is increased by the same amount, in a way that the total amount of money received from the Buyer to the Seller corresponds to the initial contract value.

## 7. RETENTION OF TITLE

The ownership in the Products vests in the Supplier until all payments hereunder have been made in full. Therefore, Seller shall be entitled to repossess delivered Products in case payments are not made when due. Buyer acknowledges that Seller may file a financing statement or comparable document as required by applicable law and may take all other action it deems reasonably necessary to perfect and maintain such retention of title in Seller and to protect Seller's interest in the Products. Any deposit, down-payment or any other partial payment paid by Buyer shall be deemed as specific compensation in case of Buyer's failure to make full payment, without prejudice to any other action Seller would be entitled to bring against Buyer. Buyer shall take all relevant action to protect retention of title for the benefit of Seller.



## 8. SET OFF

Neither Buyer nor any of its affiliates shall have any right to set off undisputed claims against Seller or any of its affiliates for amounts owed under this Agreement or otherwise, or to suspend payment of any invoice issued by the Seller on the basis of any disputed sums claimed by the Buyer.

## 9. SITE RISKS

Concealed/Unknown Conditions. The parties acknowledge and agree that increased costs or schedule extensions due to any concealed/unknown conditions at the job site or other events and circumstances coming for the Buyer's sphere of influence including strikes of personnel not in Seller's employ shall be to Buyer's account. Buyer shall hold Seller harmless for increased costs and grant any necessary schedule extensions if any concealed/unknown or hazardous conditions are found.

## 10. TERMINATION

In general, a Party may have the right to terminate its obligations under this Agreement if the other Party is in material breach of the Agreement and a period to cure the breach of at least 30 days has been granted to the breaching Party. In case of such termination by the Buyer, the Seller shall be compensated by the Buyer for the expenses and investments incurred up to the effective date of termination for the performance of Agreement. Seller shall have the right to suspend and/or terminate its obligations under this Agreement if any payment is not received within 30 days of due date. In the event of Buyer bankruptcy or insolvency or in the event of any bankruptcy or insolvency proceeding brought by or against Buyer, Seller shall be entitled to terminate and shall receive reimbursement for its cancellation charges.

## 11. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

(1) Buyer acknowledges that the information which Seller share with the Buyer (whether orally or in written form) in connection with this quotation, acknowledgment or performance of this Agreement includes Seller's confidential and proprietary information, both of a technical and commercial nature. Buyer agrees not to disclose such information to third parties without Seller's prior written consent granted on a case by case basis.

(2) The intellectual property rights, copyrights and other rights connected therewith, in respect of design, manufacture, supply of the Product, drawings, specifications, documents, data and software made available by the Seller to the Buyer shall be owned solely by the Seller and shall remain its property.

## 12. FORCE MAJEURE

(1) Force Majeure Defined. For the purpose of this Agreement "Force Majeure" will mean all events, beyond the reasonable control of either party, whether foreseeable or not, which affect the performance of this Agreement, including but not limited to strikes, lockouts or other industrial disturbances, acts of public enemy, wars, riots, earthquakes, fires, storms, severe weather, floods, pandemics or epidemics.

(2) Suspension of Obligations. If either Buyer or Seller is unable to carry out its obligations under this Agreement due to Force Majeure, other than the obligation to make payments due hereunder, and the party affected promptly notifies the other of such delay, then all obligations that are affected by Force Majeure will be suspended or reduced for the period of Force Majeure and for such additional



time as is required to resume the performance of its obligations, and the delivery schedule will be adjusted to account for the delay.

(3) Option to Terminate. If the period of suspension or reduction of operations will extend for more than four (4) consecutive months, then either Buyer or Seller may terminate this Agreement and paragraph 10 shall apply.

## 13. GENERAL

(1) If the Buyer decides, whatever the reason, not to take possession of the Product according to the agreed Incoterm at the agreed delivery date, (a) the risk of loss shall pass to the Buyer, (b) the acceptance shall be deemed as achieved, (c) the Seller shall be allowed to invoice any storage costs on the basis of documentary evidence and (d) the Warranty Period shall start at the agreed delivery date. If the storage period exceeds thirty (30) days (a) the Seller shall be entitled to invoice the total amount of the Agreement and (b) the Seller shall be compensated for all costs incurred and duly proved.

(2) If the delivery date mentioned in the order confirmation has been expressly defined as a Seller's obligation to comply with, the following shall apply: (i) Seller's liability for late delivery for reasons attributable only to Seller and provided late delivery entails a real prejudice on Buyer is limited to the payment of liquidated damages on the basis of 0.15% of the delayed delivery per completed week of delay, limited to 5% of the Agreement price as Buyer's sole and exclusive remedy .

(3) If performance guarantees are expressly agreed between the parties, the following shall apply: (i) Seller's liability for failure to achieve performance guarantees expressly agreed and provided failure to achieve performance guarantees entails a real prejudice on Buyer is limited to the payment of liquidated damages in accordance with the Seller's acceptance procedure and test protocol with guaranteed operating parameters and calculation rules. Such liquidated damages shall be limited to 5% of the Agreement price as Buyer's sole and exclusive remedy.

(4) The aggregate liability for all liquidated damages (for delay and performance) shall be limited to an amount not exceeding 5% of the Agreement price.

(5) The Buyer shall notify any claim -for damages or otherwise- within ten (10) days from the occurrence date of the event generating the claim. If the Buyer fails to issue a claim within such period of ten (10) days, the Buyer shall not be entitled to obtain any compensation, remedy or any other contract right from Seller in connection with the claim.

(6) Without prejudice to any other payment terms specifically agreed, payment is due within thirty (30) days of Product delivery. In case of late payment, Seller shall be entitled to charge interest, without prior notice, on all sums unpaid equal to the interest rate applied by the European Central Bank at due date of payment to its most recent refinancing operation plus ten (10) percentage points.

(7) Seller represents that any Products or parts thereof manufactured by Seller will be produced in compliance with all applicable laws applicable to their manufacture and in accordance with Seller's engineering standards. Seller shall not be liable for failure of the Products to comply with any other specifications, standards, laws or regulations.

(8) This Agreement shall inure only to the benefit of Buyer and Seller and their respective successors and assigns. Any assignment of this Agreement or any of the rights or obligations hereunder, by either party without the written consent of the other party shall be void.



(9) This Agreement contains the entire and only agreement between the parties with respect to the subject matter hereof and supersedes all prior oral and written understandings between Buyer and Seller concerning the Products and any prior course of dealings or usage of the trade not expressly incorporated herein.

(10) If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of any remaining provisions of this Agreement shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, any provisions of this Agreement shall be construed so as to give effect to the intent manifested thereby.

(11) Any dispute, controversy or claim arising out of, or in relation to, this Agreement, including the validity, invalidity, breach or termination thereof shall be finally settled exclusively under the Rules of Arbitration and Conciliation of the Arbitral Centre of the Federal Economic Chamber, Vienna, by one or more arbitrators appointed in accordance with the Rules in force on the date on which the notice of arbitration is submitted. The arbitral proceedings shall be conducted in German or in English. Arbitration award shall be considered final and binding upon the Parties. Austrian law applies.