

GENERAL terms of sale and supply of ITT Austria (Seller) as of 1. April 2009

- 1. Validity**
- 1.1. The following General Terms of Sale and Supply shall apply to all offers, deliveries and services provided by Seller unless the parties have agreed otherwise in writing. Unless their inapplicability is expressly agreed in writing, these terms shall – without the need of any separate agreement – also apply to future business between the parties. These terms apply to deliveries of goods and to services. General terms and conditions of Purchaser/Customer shall only bind the Seller upon his written consent thereto in respect of a particular transaction and shall only apply to such particular transaction. Tacit behaviour versus the Terms of Sales of the Purchaser cannot be assumed as indication of acceptance.
- 1.2. With respect to transactions with consumers within the meaning of the Austrian Consumer Protection Act („Konsumentenschutzgesetz“), Federal Law Gazette 1979/140, these Terms of Sale and Supply only apply insofar, as they are not inconsistent with the mandatory provisions of this Act.
- 1.3. As for services and installations, the Terms of Installation issued by the Austrian Association of the Engine and Steel Building Industry additionally apply.
- 6. Prices**
- 6.1. If not otherwise agreed, the prices are quoted „ex works“, not including packing, transportation or additional costs, plus VAT and other taxes.
- 6.2. A change of the contractual price due to a change in costs is admissible until the delivery date and must be borne by Purchaser, if not otherwise agreed upon.
- 6.3. If the contract does not specify prices, the purchase price shall be calculated in accordance with the price valid on the date of delivery.
- 7. Payment**
- 7.1. In the absence of different conditions of payment agreed to in writing, half of the purchase price shall be paid within 10 days upon receipt of the order acceptance, the rest upon notice that the goods are ready for dispatch. The payments for part deliveries are to be made in accordance with the above conditions of payment, provided that payments are to be made proportionally to the value of the part delivery. Any payment (from the Purchaser) is only be considered as fulfilled and received from the date of free access and availability of this payment by ITT Austria.
- 7.2. Purchaser is not entitled to withhold payments because of warranty claims or other counter-claims, which have not been accepted by ITT Austria in writing or to set-off with such claims.
- 7.3. If Purchaser is in default of payment or of fulfilment of other obligations, ITT Austria may demand performance of the contract or – upon setting a reasonable grace period – declare the rescission of the contract. ITT Austria is entitled to defer performance of its own obligations until receipt of the outstanding payments or fulfilment of any other obligation by Purchaser, or ITT Austria may respectively demand payment of the full outstanding purchase price. If ITT Austria declares the rescission of the contract, Purchaser shall return the already supplied goods to ITT Austria upon Purchaser's risk and expense, compensate the depreciation of the goods and refund all justified expenditures which ITT Austria has incurred in performance of his contractual obligations. In regard to not yet delivered goods, ITT Austria is entitled to make finished and prepared goods available to Purchaser and to claim a corresponding share of the purchase price at delivery.
- 7.4. In case of default in payment, default interest to the amount of 8 % (eight per cent) above the base rate of the European Central Bank is charged.
- 7.5. Purchaser has to reimburse ITT Austria for all damages caused by delay, in particular all extra-judicial costs incurred in connection with the enforcement of Purchaser's obligations according to statute §1333 Par 3 of the Austrian General Civil Law Code („Allgemeines Bürgerliches Gesetzbuch“).
- 7.6. The acceptance of discounted bills of exchange is subject to special agreement whereby the interest and discount costs are to be borne by the Purchaser in each case. The payment of the invoices is only made on the final receipt of the credited amount. No cash-discount will be granted for payments by means of bill of exchange. The Seller does not accept liability for submittal or protesting for incoming and received bills of exchange.
- 8. Retention of title**
- 8.1. ITT Austria has retention of property rights on the delivered object until receipt of all payments including interest and any legal costs. Moreover this reservation of property right does also apply to any other outstanding debts caused by this business connection. The reservation of property right is explicitly appointed and agreed upon. ITT Austria is entitled to mark its ownership on the supplied goods.
- 8.2. The Purchaser assigns to us all claims herewith and as of now accrued to him from a further sale to Third Parties and this irrespective of whether the goods were sold on by the Purchaser without or following processing. Purchaser is under obligation to annotate the assignment in his books and to inform the Third Party on the existing retention of title by ITT Austria in written form – a copy of this letter must be submitted to ITT Austria.
The Purchaser is prohibited from reaching agreements with Third Parties that either exclude or could be detrimental to the rights of ITT Austria in any way. ITT Austria can demand that the Purchaser makes known all required data for the collection the assigned claims and their debtors, hands over the documentation applicable and informs the debtors of the assignment that has been made in writing. ITT Austria insists on the right to either claim the Purchaser or the Third Party for payment according to our preference.
To the extent that the goods delivered under caveat are to be sold onwards with other goods that have not been our property, the claims of the Purchaser against his customer will be assigned to us to the amount of the delivery price agreed between the Purchaser and us (including all taxes, interest and operating costs.)
- 8.3. The Purchaser may not assign the delivered object either in pledge or as a security to any Third Party. Pledging of goods or confiscation or any other disposals by Third Parties must be reported in writing to ITT Austria without delay.
- 8.4. All purchased objects shipped under Retention of Title have to be properly handled and stored by the Purchaser. Until expiry of the Retention of Title, the Purchaser has to act as trustee and to perform accordingly with the shipped objects. All costs accrued from ITT Austria for our assertion of retention title must be refunded by the Purchaser.
- 9. Warranty**
- 9.1. ITT Austria warrants that all new products sold are free from material defects and defects in fabrication.
- 9.2. The warranty period for all ITT Austria products is 24 months as of the transfer of risk or - in case of pump supply including installation - after completion of this installation. The warranty period for original spare parts (manufactured in our house or under our surveillance) is also 24 months. For all revamped/exchange products or revamped products components (both must initially been an ITT Austria product) we do grant a warranty period of 12 months only. The (attempted) correction/replacement/adjustment does not entail a prolongation of the warranty period. The presumption as set out in section 924 of the Austrian General Civil Code („Allgemeines Bürgerliches Gesetzbuch“) is not applicable, i.e., Purchaser has to prove that the alleged defect existed at the time of delivery. For all delivered goods which are a commercial item for ITT Austria and have been manufactured by our vendor in an EU country we reserve us the right versus the purchaser to refer him directly back to the original manufacturer for direct handling and executing any warranty claim without involvement of the seller.
In case the Purchaser is an Enterprise/Company, the Seller ITT Austria is released from the responsibility to cover any damages to property from the Purchaser according to § 9 Austria Product Liability Law 1988. For all products from ITT Wedeco (and especially for the consumable parts like UV lambs) please refer to separate Warranty Terms with additional severe restrictions and deviations to this General Terms of Sale.
- 9.3. Warranty claims can only be raised by Purchaser provided that the goods have, immediately upon receipt, been inspected fully and in detail and that all defects (including transportation damage) were notified to ITT Austria immediately after such inspection in writing. (time limit: eight days after arrival on destination as stated in the shipping papers) Should Purchaser fail to inspect the goods, they are deemed to have been duly transferred and delivered.
- 9.4. In a warranty case, Seller may choose:
 - a) to correct the defective goods on the spot;
 - b) to arrange for the re-transport of the defective goods or parts thereof for repair to the Seller to Purchaser's expense and risk;
 - c) to replace the defective parts; or
 - d) to replace the defective goods.
 e) It must be explicitly noted that any removal and/or installation cost for pump/driver/controlling devices, initiated and accomplished by the Seller or any Third Party, are strictly denied for acceptance and payment.
In case of correction/replacement, a reasonable time period of at least 90 days shall be granted.
- 9.4. The replaced goods or parts are at the ITT Austria disposal.
- 9.5. The warranty obligation of ITT Austria and all warranty claims from the Purchaser expires in case the buyer or any other Third Party performs repairs or modification or corrective actions without having the prior written explicit approval from ITT Austria. ITT Austria only has to bear the expenses of an adjustment/modification/repair job/replacement of the total pump unit or pump component performed by purchaser or a Third Party upon a prior written consent (description of work and cost-limit) and approval from the Seller.
- 9.6. ITT Austria warranty obligations only apply with respect to defects which occurred despite observance of designated operating conditions and standard usage. In particular, they do not apply to defects which are due to
 - A) poor maintenance/servicing/installation (on the basis of the instruction manual and the designated operating conditions under the purchase contract);
 - B) Repairs and alterations performed by Purchaser or third parties without Seller's prior written approval;
 - C) Regular wear and tear as well as damages to mechanical seals, sealing rings, anti-friction and sleeve bearings,
 - D) wear rings as well as bushes, shaft sleeve, hoses, tubes, filters and fuses;
 - E) All impacts or effects or consequences caused by the operation with corrosive and/or erosive liquids or any corrosive environment.
 - F) Deviation in either hydraulic and mechanical service conditions or operating data or deviating liquid properties compared to all data specified in the sales contract.
- 9.7. With regard to goods ITT Austria obtained from sub-suppliers specified by Purchaser, ITT Austria is liable only to the extent / scope of warranty claims received and granted to ITT Austria from the sub-supplier. If the goods were produced by ITT Austria on the basis of construction figures, drawings, or models provided by Purchaser, ITT Austria's liability does not apply to the correctness of the construction, but only as to the compliance with the Purchaser's order (excluding the duty for warning). In these cases Purchaser has to indemnify ITT Austria if Third Parties' intellectual property rights are violated.
- 9.8. ITT Austria's warranty obligations terminate upon any arbitrary reparations or alterations made to the sold products or upon passage of title.
- 9.10. ITT Austria does grant a warranty period of 12 months with regard to repair and/or maintenance orders, modification and changes on all ITT Austria products under the assumption that original ITT Austria spares and/or product- components from authorized/approved vendors from ITT Austria are used. Above stated work can be executed either in our shop or on site by our authorized/ approved representatives. The warranty is excluded for any repair or modification of non-ITT/Vogel products and in case other used goods or non ITT Austria spare parts have to be used (upon request of purchaser) in our ITT Austria products.
- 9.11. In case the buyer is employing any Third Party or Engineering Consultant for determining the cause of damage, the Purchaser has to cover the cost for this investigation. Only in case of prior explicit approval from the Seller (approval for extent of investigation and agreeing upon a cost limit) the Seller will refund these expenses.
- 9.12. In case of a warranty claim in which the Seller recognizes that the shipped pump is not suitable and expedient for this service, the Seller has the right to withdraw this product from site and to pay back the contract value of this product deducted by an equivalent amount for the already used operation period – the maximum refundable amount will be the initial contract value.
- 9.13. Statutory warranty provisions shall only be applicable to the extent that their application does not expand Seller's liability, as provided in these General Terms of Sale and Supply.
- 9.14. Repair or modifications on any external product (none ITT Austria product) and usage of any externally manufactured spare or usage of already used / worn spares for our ITT Austria products will result in a disclaimer for warranty.
- 9.15. The Purchaser explicitly agrees upon waiving a refutation based on error and/or lack of activities.
- 9.16. If the Purchaser represents a final consumer to the terms of the Consumer Protection Act § 1 KSchG, the statutory terms apply to the liability for faults.
- 10. Liability – Product Liability - Indemnities**
- 10.1. Regardless of the reason for any damage claims by Purchaser against Seller or any of his auxiliary persons, such claims are excluded, unless Purchaser proves the Seller's wilful misconduct or gross negligence.
- 10.2. To the extent permitted by law, any indemnification for damages shall be limited to 5% of the contract value and shall in no case exceed EUR 10.000 (ten thousand).
- 10.3. Any claims for damages shall prescribe after one year after the transfer of risk.
- 10.4. Any claims for damages coextensive to a warranty claim, which are in respect to defects of the goods supplied, are excluded if and to the extent such claim exceeds the warranty claims as set forth in item 8. Unless otherwise agreed, Seller's liability vis-à-vis the Purchaser shall, to the extent permitted by law, not cover .
- 10.5. Damages arising out of production stops, personal injury, loss of profits, damage to any goods and/or any utilities which are not subject of the sales-contract, loss of use, loss of contracts or any other consequential damage including indirect damages.
- 10.6. The object of purchase only guarantees the extent of safety that can be expected based on rules of admission, instruction manuals, the Seller's instructions on the handling of the object – in particular with regard to compulsory revisions – and other indications if such are provided.
- 11. Jurisdiction, Applicable Law, Place of Performance**
- 11.1. All disputes arising directly or indirectly from the contractual relationship shall be submitted to the competent Austrian Court at the Seller's registered office. Besides this primarily selected court-location, ITT Austria has the right to claim the Purchaser on any other court which is appropriate for the intended lawsuit.
- 11.2. The contract is governed by the Laws of the Republic of Austria, excluding the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980, Federal Law Gazette 1988/96.
- 11.3. The registered office of the Seller shall be deemed the place of performance for supply and payment, even if delivery is agreed to be performed elsewhere.