

## **General Terms and Conditions of 3D Wind AG**

### **§ 1**

#### **General – Scope**

1. Our Terms and Conditions of Sale apply exclusively and are an integral part of all contracts for delivery and service between 3D Wind AG and the customer; we do not recognize any terms and conditions of the customer that are contrary to or deviate from our Terms and Conditions of Sale unless we have expressly agreed to their validity in writing. Our Terms and Conditions of Sale also apply if we deliver to the customer without reservation in the knowledge that the customer's terms and conditions conflict with or deviate from our Terms and Conditions of Sale.
2. All agreements made between us and the customer for the purpose of executing this contract are set out in writing in this contract.
3. Our Terms and Conditions of Sale apply to all present and future business relations with the customer.

### **§ 2**

#### **Contract closure**

1. Our offers are non-binding as long as 3D Wind AG does not expressly submit an offer. We reserve the right to make technical changes as well as changes in shape, color and/or weight within reason.
2. If the order is to be qualified as an offer as per Art. 5 of the Swiss Code of Obligations, we may accept it within 2 weeks of receipt of the message.
3. The conclusion of the contract is subject to correct and timely delivery by our suppliers. This applies only in the event we are not responsible for the non-delivery, in particular if a congruent hedging transaction is concluded with our supplier. The customer will be informed immediately about the unavailability of the service. The consideration will be refunded without delay.

### **§ 3**

#### **Prices – Terms of payment**

1. Unless otherwise stated in the order confirmation, our prices apply «ex works», excluding packaging and shipping; these will be invoiced separately. We reserve the right to change our prices appropriately if, after conclusion of the contract, cost reductions or cost increases occur, in particular due to collective wage agreements or changes in the price of materials. We will provide evidence of such changes to the customer upon request.
2. The statutory value added tax is not included in our prices; it will be shown separately in the invoice at the statutory rate on the day of invoicing.
3. Packaging, freight and all shipping costs shall be borne by the customer
4. Unless stated otherwise in the order confirmation, the purchase price shall be due for payment within thirty days from the date of invoice (without deduction). After expiry of this period, the customer shall be in default of payment. The legal regulations concerning the consequences of default in payment shall apply. We reserve the right to prove or assert a higher damage caused by delay.
5. The customer is only entitled to set-off rights/clearing rights if his counterclaims have been legally established, are undisputed or have been acknowledged by us. He is furthermore entitled to exercise a right of retention insofar as his counterclaim is based on the same contractual relationship.
6. If the customer is in default of payment, we are entitled to declare all claims against the customer due and payable and to charge the statutory interest rate, however at least 1 % points per month, unless the customer proves a lesser damage.

### **§ 4**

#### **Delivery and delivery time**

1. Unless otherwise stated in the order confirmation, delivery is agreed «ex works».
2. Delivery will be made regularly by dispatch to the delivery address specified by the customer. 3D Wind AG organizes the transport of the products at its own discretion, whereby special requests of the customer will be taken into account as far as possible.

3. We are entitled to ship the goods to be delivered from a place other than the place of performance. Upon request of the customer, we will cover the delivery with transport insurance; the customer bears the costs incurred in this respect.
4. Our delivery dates are subject to change, since we are partly dependent on the supply by foreign suppliers.
5. All delivery dates are subject to unforeseen obstacles. All events of force majeure for which we are not responsible pursuant to Art. 119 of the Swiss Code of Obligations release us from fulfilment of the contractual obligations for as long as such events persist. We are obliged to inform the customer immediately if such an event occurs; at the same time we are obliged to inform the customer how long such an event is expected to last. If such an event lasts longer than three months, we may withdraw from the contract. The consideration will be refunded without delay.
6. The start of the delivery period stated by us presupposes the clarification of all technical and commercial questions.
7. Compliance with our delivery obligation further presupposes the timely and proper fulfilment of any obligation of the customer. The plea of non-performance of the contract (Art. 82 / 184 para. 2 CO) and the plea Art. 83 CO remain reserved.
8. If the customer is in default of acceptance or culpably violates other obligations to cooperate, we are entitled to demand compensation for the damage incurred by us in this respect, including any additional expenses. We reserve the right to assert further claims.
9. If the conditions of paragraph (8) are met, the risk of accidental loss or accidental deterioration of the object of sale passes to the customer at the point in time at which the customer is in default of acceptance or debtor's delay.
10. We are liable in accordance with the statutory provisions insofar as the underlying purchase contract is a transaction for delivery by a fixed date within the meaning of Art. 108 No. 3 of the Swiss Code of Obligations. We are also liable in accordance with the statutory provisions if, as a result of a delay in delivery for which we are responsible, the customer is entitled to claim to no longer have an interest in the further performance of the contract.
11. We are also liable in accordance with the statutory provisions if the delay in delivery is due to an intentional or grossly negligent breach of contract for which we are respon-

sible; the liability of an associate is excluded in accordance with Art. 101 Para. 2 of the Swiss Code of Obligations. If the delay in delivery is not due to an intentional breach of contract for which we are responsible, our liability for damages are limited to the foreseeable, typically occurring damage.

12. We are also liable in accordance with the statutory provisions insofar as the delay in delivery for which we are responsible is based on the culpable breach of a essential contractual obligation; in this case, however, the liability for damages are limited to the foreseeable, typical damage.
13. In the event of a delay in delivery, we are liable for each full week of delay within the framework of a lump-sum compensation for delay in the amount of 0.5% of the value of the delivery, but not more than 5% of the value of the delivery.
14. If the customer is in arrears with payments from the business relationship for more than 14 days after the due date, we are entitled to continue delivery only after payment has been made. This shall not entitle the customer to refuse acceptance of delivery. Any further rights given to us remain unaffected.
15. We reserve the right to make partial deliveries.

## **§ 5**

### **Transfer of risks**

1. The risk of loss, deterioration and shipment pass to the customer in all cases as soon as the goods leave our business premises in the course of delivery. If the dispatch is delayed for a reason for which we are not responsible, the risk passes to the customer as soon as the goods have been selected to be delivered and the customer has been notified that the goods are ready for dispatch.

## **§ 6**

### **Responsibility for defects and product responsibility**

1. As a matter of principle, only the manufacturer's product description shall be deemed agreed as the quality of the goods. Public statements, recommendations or advertising by the manufacturer do not constitute a contractual description of the quality of the goods.
2. Claims for defects do not exist in case of only insignificant deviation from the agreed quality or in case of only insignificant impairment of the usability.

3. The customer's rights in respect of defects is subject to the condition that the customer has duly complied with its obligation under Art. 201 of the Swiss Code of Obligations to examine the goods immediately and to give notice of defects, which is hereby agreed as a contractual obligation. The customer bears the full burden of proof for all claim prerequisites, in particular for the defect itself, for the time of the defect and for the timeliness of the notice of defect.
4. In the event of a defect in the purchased goods, we are entitled to choose between supplementary performance in the form of rectification of the defect or delivery of a new, defect-free item. In the event of rectification of the defect, we shall be obliged to bear all expenses necessary for the purpose of rectifying the defect, in particular transport, travel, labor and material costs, insofar as these are not increased by the fact that the purchased item has been taken to a place other than the place of performance and the transfer does not correspond to its intended use.
5. If the supplementary performance fails, the customer is entitled, at its option, to demand rescission or reduction of the purchase price. However, in the event of only a minor breach of contract, in particular in the event of only minor defects, the customer is not be entitled to withdraw from the contract.
6. We are liable in accordance with the statutory provisions if the customer asserts claims for damages based on intent or gross negligence. Insofar as we are not accused of intentional breach of contract, the liability for damages is limited to the foreseeable, typically occurring damage. Liability for slight and medium negligence is excluded.
7. We are liable in accordance with the statutory provisions if we culpably breach a essential contractual obligation; in this case, however, the liability for damages ia limited to the foreseeable, typically occurring damage.
8. Liability for culpable injury to life, limb or health remains unaffected; this also applies to mandatory liability under the Act on Liability for Defective Products.
9. Unless otherwise stipulated above, any further liability is excluded.
10. The limitation period for claims for defects is 2 years in accordance with Art. 371 of the Swiss Code of Obligations, calculated from the transfer of risk.

11. The customer only carries out justified supplementary performance claims of its customers after prior consultation and in agreement with us; the customer is obliged to inform us in advance of the probable costs of supplementary performance. The customer carries out its own supplementary performance without our prior written consent at its own risk.
12. The customer does not receive any guarantees in the legal sense from us. Manufacturer's guarantees remain unaffected by this.
13. 3D Wind AG is liable within the scope of the mandatory provisions of product liability. Except in the case of unlawful intent or gross negligence, any further liability is excluded. Knowledge of the relevant regulations for the use of our products (in particular SIA standards, DIN standards and building law) as well as the examination of any specifications of third parties (e.g. planners, builders) is in any case the responsibility of the customer. 3D Wind AG disclaims any liability for damages that may arise as a result of non-compliance with these regulations.

## **§ 7**

### **Total liability**

1. Any further liability for damages than provided for in § 6 is excluded, irrespective of the legal nature of the claim asserted. This applies in particular to claims for damages arising from culpa in contrahendo, from other breaches of duty or from tortious claims for compensation for property damage pursuant to Art. 41 CO.
2. The limitation according to paragraph (1) also applies insofar as the customer demands compensation for useless expenditure instead of a claim for compensation for damage instead of performance.
3. Insofar as the liability for damages against us is excluded or limited, this also applies with regard to the personal contractual and non-contractual liability for damages of our employees, workers, staff, representatives and vicarious agents.

## **§ 8**

### **Retention of title**

1. We reserve the property rights, industrial property rights and copyrights to models, illustrations, drawings, calculations and other documents. This also applies to the written documents which are designated as "confidential". The customer must obtain our express written consent before passing them on to third parties.
2. We retain title to the object of sale until receipt of all payments arising from the business relationship with the customer. The customer authorizes us to arrange for entry in the public register of retention of title at the respective place of residence of the customer from the time of conclusion of the contract in accordance with Art. 715 CC. In the event of conduct by the customer in breach of contract, in particular in the event of default in payment, we are entitled, after setting a reasonable deadline, to take back the object of sale. The statutory cases of dispensability of a deadline remains unaffected. Our taking back of the object of sale constitutes a rescission of the contract. After taking back the object of sale, we are entitled to dispose of it; the proceeds of such disposal is set off against the customer's liabilities - less reasonable costs of disposal.
3. The customer shall be obliged to treat the object of sale with care; in particular, he shall be obliged to insure it adequately at his own expense against damage by fire, water and theft at its replacement value.
4. In the event of seizure or other interventions by third parties, the customer must notify us immediately in writing so that we can take legal action in accordance with Art. 106-109 SchKG. Insofar as the third party is not in a position to reimburse us for the court and out-of-court costs of a third-party action, the customer is liable for the loss incurred by us.
5. The customer shall be entitled to resell the object of sale; however, he hereby assigns to us all claims in the amount of the final invoice amount (including VAT) of our claim accruing to him from the resale against his customers or third parties, irrespective of whether the object of sale has been resold without or after processing. The customer remains authorized to collect this claim even after the assignment. Our authority to collect the claim ourselves remains unaffected. However, we undertake not to collect the claim as long as the customer meets its payment obligations from the proceeds collected, is not in default of payment and, in particular, as long as no application for the

institution of insolvency proceedings has been filed or payments have not been suspended. If this is the case, we may demand that the customer informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment.

6. If the object of sale itself is processed with other objects not belonging to us, we acquire co-ownership of the new object in the ratio of the value of the object of sale (final invoice amount, including VAT) to the other processed objects at the time of processing. In all other respects, the same applies to the object created by processing as to the object of sale delivered subject to reservation of title.
7. If the object of sale is inseparably mixed with other objects not belonging to us, we acquire co-ownership of the new object in the ratio of the value of the object of sale (final invoice amount, including VAT) to the other mixed objects at the time of mixing. If the mixing is carried out in such a way that the customer's item is to be regarded as the main item, it is deemed agreed that the customer transfers co-ownership to us on a pro rata basis. The customer holds the sole ownership or co-ownership thus created in safe custody for us.
8. If the retention of title or the assignment is not effective according to the law in whose area the goods are located, the security corresponding to the retention of title or the assignment of the goods in this area is deemed to have been agreed. If the customer's cooperation is required for the creation of the rights, he is obliged, at our request, to take all measures at his own expense which are necessary for the creation and maintenance of such rights.
9. We undertake to release the securities to which we are entitled at the customer's request to the extent that the realizable value of our securities exceeds the claims to be secured by more than 10%; the choice of the securities to be released shall be ours.

## **§ 9**

### **Returns**

1. In principle, there is no right to returns. A return request must be discussed with us in advance. 3D Wind AG shall be responsible for deciding whether to return goods for a fee or free of charge and for reimbursing any sales price paid. For each return shipment we can charge the customer the resulting handling costs.



## **§ 10**

### **PrSG – VREG – VeVA**

1. Insofar as our obligations under the Federal Product Safety Act (PrSG) and the Ordinance on the Return, Take-Back and Disposal of Electrical and Electronic Equipment (VREG) as well as the Ordinance on the Handling of Waste (VeVA) are not mandatory for us, the customer shall ensure that these provisions are complied with.

## **§11**

### **Place of jurisdiction – Place of performance – Applicable law**

1. All disputes are settled exclusively before the Regional Court of Bern-Mittelland or, if the conditions are met, before the Commercial Court of Bern; 3D Wind AG is, however, also entitled to sue the Customer at other places of jurisdiction.
2. If the customer is a merchant and nothing to the contrary is stated in the order confirmation, our place of business are the place of performance.
3. The law of the Swiss Confederation applies; the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) are hereby explicitly excluded.