

▼ **GENERAL TERMS AND CONDITIONS OF DELIVERY AND BUSINESS OF WHYSTLER AUTOMATION GMBH**

Kitzingen, 10.02.2025

I. Scope of Application

(1) Our General Terms and Conditions of Delivery and Business set forth below apply to business transactions with companies.

(2) Our deliveries, services, and offers are made exclusively on the basis of the following terms and conditions. Any conflicting or deviating terms and conditions of the customer are hereby expressly rejected. Our terms and conditions shall apply even if we make deliveries without reservation while being aware of the customer's conflicting or deviating terms and conditions. Any deviations from our terms and conditions require our express written consent.

(3) Our terms and conditions shall also apply to future services and services provided within the framework of an ongoing business relationship, unless we confirm such services under different terms and conditions.

II. Offers and Conclusion of Contracts; Written Form

(1) Unless otherwise expressly stated, our offers are subject to change and non-binding.

(2) A contract with our customers is not concluded until we accept the customer's order in writing by issuing an order confirmation or by performing the delivery or service. Our acceptance period is 4 (four) weeks from receipt of the order.

(3) Any amendment to a contract that has been concluded—including the subsequent financing of the delivered goods by a leasing company engaged by the customer—is possible only with our consent.



(4) Guarantees regarding quality or durability, agreements regarding quality, or statements regarding the use of the delivered item, as well as ancillary agreements made prior to our order confirmation, are valid only if we confirm them in writing. Agreements and statements in our offers regarding the quality or use of the delivered goods take precedence over the information provided in our brochures, demonstration machines, drawings, descriptions, price lists, and other documents. Information regarding the physical properties of packaging materials—in particular regarding quality, thickness, or dimensions—is to be understood solely as suggestions, and we assume no liability for their accuracy.

### III. Pricing

(1) Unless expressly agreed otherwise, our prices are quoted for delivery ex works (EXW), excluding packaging and transportation, and do not include costs for installation, assembly, commissioning, and training of operating personnel.

(2) Our prices do not include sales tax; this will be shown separately on the invoice at the statutory rate in effect on the date of invoicing. We reserve the right to increase prices to the extent that we generally raise our prices.

(3) If, during the course of order processing, unforeseeable, above-average price increases (measured against the long-term average inflation rate) occur on the part of our suppliers for materials and components, we are entitled to pass on the additional cost to our customers. This expressly applies even if a fixed price was agreed upon in the contract. The reason for and extent of the price increase must be clearly documented for the customer.

### IV. Terms of Payment

(1) A payment is not considered to have been made until we have full and final access to the amount. In the case of payments by check, the payment is not considered to have been made until the check has been cleared.

(2) Notwithstanding any provisions to the contrary, we are entitled to apply the customer's payments first toward older debts. If costs and interest have already accrued, we are entitled to apply the payment first toward the costs, then toward the interest, and finally toward the principal claim.



(3) We are not obligated to accept checks. Any acceptance is always made only on account of payment. Any associated fees shall be borne by the customer and are due immediately upon settlement. We assume no liability for the timely presentation or filing of a protest.

(4) If the customer is required to open a documentary letter of credit, the Uniform Customs and Practice for Documentary Credits, Revision 1993, ICC Publication No. 500, shall apply.

(5) If the customer fails to meet its payment obligations—in particular, if it fails to honor a check, suspends payments, falls more than 14 days in arrears on undisputed claims despite a reminder, or if enforcement proceedings against it are unsuccessful—we are entitled to declare the entire remaining debt due, even if we have accepted checks. In this case, we are also entitled to demand advance payments or security deposits with respect to all contracts and, after the expiration of a reasonable grace period without result, to withdraw from these contracts and claim damages in lieu of performance.

(6) The customer may set off only those counterclaims that are not disputed by us, have been acknowledged by us, or have been legally established. The customer is also not entitled to a right of retention based on disputed counterclaims.

## V. Delivery Time

(1) Unless otherwise agreed, the contractually agreed delivery times are approximate. We will adhere to them to the extent possible.

(2) The delivery time is determined by the agreements between the contracting parties. The supplier's compliance with this time requires that all commercial and technical issues between the contracting parties have been clarified and that the purchaser has fulfilled all obligations incumbent upon it, such as providing the necessary documents, certificates, or approvals, safety and risk analyses, or expert opinions, coordination with upstream and/or downstream suppliers regarding system interfaces, films, drawing and design approvals, or the payment of a down payment. If this is not the case, the delivery time shall be extended accordingly. This does not apply if the supplier is responsible for the delay.



(3) Compliance with the delivery time remains subject to correct and timely supply from the supplier's own suppliers. In the event of delivery delays in the supply chain, the delivery time shall be extended accordingly. The supplier shall notify us of any impending delays as soon as possible.

(4) Delivery deadlines are deemed met if, by the time they expire, the delivery item has left the factory or notification that it is ready for shipment has been provided.

(5) Disruptions to business operations for which we are not responsible, in particular due to labor disputes, cases of force majeure, unforeseeable import and export restrictions, shortages of raw materials required by us, disruptions in the energy supply, etc., whether occurring at our facilities or those of our suppliers, shall extend the delivery period accordingly, provided that such obstacles demonstrably have a significant impact on the completion or delivery of the purchased item. We shall not be held responsible for the aforementioned circumstances even if they arise during a period of delay that has already begun. In significant cases, the customer will be notified of the start and end of such obstacles as soon as possible.

(6) If we exceed the delivery deadline for reasons for which we are responsible, we shall be in default of delivery if, after the delivery deadline has expired, the customer requests delivery in writing with a notice period of at least three weeks and we allow this period to elapse. In this case, the customer is entitled to claim a lump-sum compensation for delay of 0.5% of the delivery value for each full week of delay, up to a maximum of 5% of the delivery value. Further claims by the customer are excluded unless one of the exceptions listed in Section X, paragraphs (2) and (3), applies.

(7) If, after we have already fallen into default, the customer grants us a reasonable grace period for performance or subsequent performance—which must be at least 6 (six) weeks—the customer is entitled to withdraw from the contract upon the fruitless expiration of this period, provided that we are responsible for the delay. The setting of a grace period is not required under the statutory conditions of Section 323(2) of the German Civil Code (BGB).



(8) Upon our request, the customer is obligated to declare within a reasonable period of time whether they are withdrawing from the contract, seeking damages in lieu of performance, or insisting on performance.

(9) If disruptions of the type described in paragraph (5) are not merely temporary but render our performance permanently impossible, we are entitled to withdraw from the contract in whole or in part. The customer has no claims for damages arising from such a withdrawal.

## VI. Transfer of Risk and Shipping

(1) The risk of having to pay the purchase price despite loss or damage passes to the customer as soon as the shipment has been handed over to the carrier or has left our plant for shipment, even if, in exceptional cases, we have assumed additional obligations, such as shipping costs, delivery, or installation. The same applies to partial deliveries.

(2) If shipment is delayed due to circumstances for which the customer is responsible, the risk passes to the customer upon notification that the goods are ready for shipment; however, we are obligated, at the customer's request, to arrange for the insurance coverage the customer requires.

(3) At the customer's request, transportation insurance for the shipment will be arranged at the customer's expense.

## VII. Delay in Acceptance

(1) If the customer refuses to accept the goods after the expiration of a reasonable period of at least 4 (four) weeks set for him, or if he expressly declares in advance that he does not intend to accept them, we may withdraw from the contract and claim damages in lieu of performance in the amount of 20% of the contract price; the customer reserves the right to prove that the damage was less, and we reserve the right to prove that the damage was greater.

(2) In the event of a delay in acceptance of more than two weeks, we are entitled to demand a lump-sum compensation for delay of 0.25% of the delivery value for each full week of delay, up to a maximum of 10% of the delivery value. The customer reserves the right to prove that the damage was lower, and we reserve the right to prove that the damage was higher.



#### VIII. Retention of Title

(1) All goods delivered by us remain our property until all obligations arising from the business relationship—including any future claims—have been fully satisfied. In the case of payments by check or bill of exchange, our claim is not considered satisfied until the corresponding amount has been definitively credited to us and no recourse claims against us can be asserted.

(2) The customer is obligated, particularly in the case of international deliveries, to submit all necessary declarations, file all required applications, and take any other measures necessary and appropriate to secure our ownership.

(3) The customer may use the delivered goods in the ordinary course of business. The customer must keep the goods in good condition and secure them in accordance with the regulations of the country in which they are located. The customer must have the necessary maintenance and inspection work performed in a timely manner at their own expense. In the event of damage to the goods, the customer hereby assigns to us any claims they may have against the party responsible for the damage.

(4) The customer may resell the goods delivered by us under retention of title only if the following conditions are met:

- a) We have expressly consented to the resale in writing or have sold the goods to the customer for the purpose of resale.
- b) The customer is not in default of its payment obligations to us.
- c) The resale takes place in the ordinary course of business.
- d) The assignment to us of the customer's claim arising from the resale is permitted without restriction.

In the event of resale, the customer hereby assigns to us, by way of security, all claims and rights arising from the resale in their entirety.

The customer is entitled and obligated to collect the assigned claims within the scope of its ordinary business operations, provided that the customer is not in default on its payment obligations to us. Our authority to collect these claims ourselves remains unaffected by this. However, we will not collect the claims as long as the customer meets its payment obligations.



At our request, the customer is obligated to notify the debtor of the assignment and to hand over to us all documents and provide all information necessary to assert the claim.

At our request, the customer is obligated to notify the debtor of the assignment and to provide us with all documents and information necessary to enforce the claim.

If the customer collects claims assigned to us without being authorized to do so, or realizes them in any other manner, we are entitled to the full amount collected or the proceeds realized.

(5) The customer may neither transfer ownership of the goods owned by us as security nor pledge them as collateral without our express written consent. The customer is obligated to notify us immediately in writing of any seizure of the goods by third parties and of any other infringement of our rights.

(6) If the customer acts in breach of the contract—in particular in the event of late payment, or if insolvency proceedings are opened against the customer’s assets or an application is filed to open such proceedings—we are entitled, but not obligated, to take back the delivered goods. Such taking back does not constitute a withdrawal from the contract unless we expressly declare this in writing.

If the customer fails to comply with our request to return the goods to us, the customer shall owe compensation for use in the amount of 5% of the purchase price of the goods, plus applicable statutory sales tax, for each month or portion thereof that the delay continues. This does not preclude us from asserting claims for further damages.

(7) We undertake to release the security to which we are entitled to the extent that its value exceeds the claims to be secured by more than 20%. The selection of the security to be released is at our discretion.

#### IX. Customer Rights in the Event of Defects, Liability

(1) The customer’s rights in the event of defects are governed exclusively by the following provisions. Any further claims by the customer are excluded.

(2) The customer warrants that the models, drawings, and other information provided by the customer are suitable and dimensionally accurate, correspond to the actual conditions, and do not infringe on the intellectual property rights of third parties. If this is not the case, the customer must reimburse us for any additional expenses incurred as a result. If exceptional climatic conditions prevail at the machine’s



location—e.g., temperatures below 15°C or above 35°C, or relative humidity below 40% or above 90%—the customer must notify us of this when placing the order. We assume no liability for damages or defects resulting from incorrect or incomplete information.

(3) We assume no liability for damage or defects resulting from improper or excessive wear and tear, incorrect or negligent handling by the customer or third parties (such as excessive strain, incorrect installation or commissioning), unsuitable operating materials or packaging materials, replacement materials, defective construction work, unsuitable building sites, weather conditions, or chemical, electrochemical, or electrical influences (e.g., power fluctuations), provided that these circumstances are not attributable to our fault. The same applies to non-reproducible software errors. Only minor deviations from the promised quality, in particular standard commercial tolerances regarding quantity and quality, do not constitute a material defect.

(4) The customer must report obvious defects in writing within two weeks of delivery. For merchants, the statutory provisions of § 377 HGB also apply, including the resulting obligations to inspect and give notice of defects. These deadlines are preclusive.

(5) In the case of justified material defects that have been properly and timely reported, the cause of which already existed at the time of the transfer of risk, we shall, at our discretion, provide subsequent performance by remedying the defect or delivering a defect-free item in exchange for the return of the defective item.

(6) We warrant only that the delivered item is free from third-party industrial property rights and copyrights (hereinafter: “property rights”) in the country of the place of delivery; a defect does not exist if and to the extent that the customer is responsible for the infringement of intellectual property rights or the customer’s infringement of intellectual property rights is caused by an application that we could not have foreseen or by the fact that the delivered item has been modified by the customer or used in conjunction with products not supplied by us. If a third party asserts justified claims against the customer due to an infringement of intellectual property rights arising from deliveries made by us and used in accordance with the contract, the customer must notify us of this immediately in writing and coordinate its defense measures with us.



In the event of a valid intellectual property defect, we shall, at our discretion, either obtain a right of use, modify our performance so that the intellectual property right is not infringed, or replace the goods (subsequent performance). The same applies in the event of other legal defects.

(7) If we refuse to provide subsequent performance, or if such performance fails or is unreasonable for the customer, the customer may rescind the contract or reduce the purchase price.

(8) The customer may assert claims for damages within the scope of statutory provisions if a defect is fraudulently concealed from the customer or if, in exceptional cases, we have assumed a warranty of quality. Further claims for damages due to defects in the delivered goods are excluded unless one of the exceptional circumstances set forth in Section X, paragraphs (2) and (3) applies.

(9) Unless we are liable for intentional misconduct, the customer's claims for defects shall be barred by the statute of limitations 12 months after the transfer of risk. This limitation period applies to all claims, including, in particular, claims for compensation for consequential damages arising from defects.

(10) Claims by the customer for expenses necessary for the purpose of subsequent performance—in particular, transportation, travel, labor, and material costs—are excluded to the extent that such expenses increase because the delivered item was subsequently moved to a location other than the customer's place of business, unless such movement is in accordance with the intended use.

## X. Liability, Damages

(1) Unless otherwise provided in these General Terms and Conditions of Delivery and Business, the Customer's claims for damages and reimbursement of expenses of any kind, regardless of the legal basis (hereinafter collectively referred to as "claims for damages"), are excluded. In particular, we are not liable for lost profits or other financial losses incurred by the Customer.

(2) The disclaimer of liability pursuant to paragraph 1 does not apply to damages:

- resulting from injury to life, limb, or health caused by a breach of duty on our part that was at least negligent,
- for which we are mandatorily liable under the Product Liability Act, or
- resulting from a breach of duty by us, our legal representatives, or our agents that was at least grossly negligent.



(3) The disclaimer of liability also does not apply to damages resulting from a breach of a material contractual obligation on our part—committed through at least negligence—provided that such breach jeopardizes the achievement of the purpose of the contract. In the case of defects, such a jeopardy exists only in the event of significant defects and, at the earliest, when the conditions of Section IX, paragraph (7) are met.

In the event of a breach of a material contractual obligation, our liability is limited to foreseeable damages typical for this type of contract, unless there is intent or gross negligence, or the damages result from a breach—at least due to negligence—of the right to life, physical integrity, or health.

(4) To the extent that our liability is excluded or limited, this also applies to the personal liability of our employees, workers, staff, representatives, and agents.

#### XI. Governing Law, Place of Performance, Jurisdiction

(1) German law applies exclusively to these delivery and business relationships and to all legal relationships between us and the customer—including in the case of international transactions. The applicability of foreign law is excluded, as is the application of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

(2) In business dealings with merchants, legal entities under public law, or special funds under public law, the place of jurisdiction for all disputes—including those involving bills of exchange and checks—is our place of business. This place of jurisdiction also applies if the customer does not have a general place of jurisdiction within Germany. However, we are entitled to sue the customer at the court of the customer's place of business as well.

(3) Unless otherwise specified in the order confirmation, our place of business is the place of performance.

#### XII. Final Provisions

(1) Should one or more provisions of these Terms and Conditions be or become invalid, the remaining provisions shall nevertheless remain in full force and effect. The invalid provision shall be replaced by a valid provision that achieves the economic purpose of the invalid provision to the greatest extent possible.



(2) Our Terms and Conditions shall remain in effect until the business relationship has been fully settled.

(3) We hereby note that we store the customer's data for the purposes specified in the contractual relationship.

## Additional Terms and Conditions for Deliveries Including Installation

### I. Costs and Risk

If we are to install the equipment to be delivered by us, the installation shall be carried out at the customer's expense and risk. All expenses incurred by us in this connection, including any overtime, Sunday, and holiday work, shall be reimbursed by the customer. This also applies to any travel and waiting time incurred. This provision does not apply unless a lump-sum price has been expressly agreed upon in writing.

### II. Working Conditions

The customer must take the necessary measures to protect persons and property at the installation site and ensure appropriate working conditions. The customer must assist the installation personnel in carrying out the installation at the customer's expense.

### III. Technical Assistance from the Customer

The customer is obligated, at its own expense, to provide technical assistance, in particular to:

- a) Carry out all structural work in sufficient time prior to the start of installation so that the installation of the system can begin immediately upon delivery and be carried out without delay. The foundation must be completely dry and set, and the rooms in which installation takes place must be adequately protected from the elements, well-lit, and sufficiently heated.
- b) Providing dry, well-lit, lockable rooms under supervision and security for the storage of machine parts, materials, tools, and other items.
- c) Provision of heating, lighting, and power, including the necessary connections.
- d) Provision of auxiliary personnel (assistant crews and skilled workers, such as electricians) in the number we deem necessary and for the required installation time.
- e) Provision of the equipment and materials required for the installation and commissioning of the machines, e.g., samples and packaging materials.
- f) Loading and transportation of the items necessary for assembly, in accordance with the type of assembly.



If the customer fails to fulfill its obligations, we are entitled, but not obligated, to perform the actions incumbent upon the customer in its place and at its expense. In all other respects, our statutory rights and claims remain unaffected.

#### IV. Installation Deadline

(1) If an installation deadline has been expressly agreed upon, compliance with that deadline is contingent upon the customer fulfilling its obligations. The installation deadline is deemed met if the system we have delivered is operational by the time the deadline expires.

(2) Section V of our General Terms and Conditions of Delivery and Business shall apply mutatis mutandis to any extension of the installation deadline and to our liability for delay, provided that the lump-sum compensation for delay amounts to 2% of the estimated installation costs per day and the maximum amount is limited to twice the estimated installation costs (Section V. Paragraph 5 of our General Terms and Conditions of Delivery and Business).

#### V. Compensation by the Customer

If, through no fault of ours, the fixtures or tools provided by us are damaged during transport or at the installation site, or if they are lost through no fault of ours, the customer is obligated to compensate for such damages. Damage attributable to normal wear and tear shall not be taken into account.

#### VI. Others

In addition, our General Terms and Conditions of Delivery and Business apply.

