

## General Terms and Conditions of Sale of Worthington Cylinders GmbH

### I. Scope of validity - Basic definitions

All transactions entered into with HTC shall be governed by these General Terms and Conditions of Sale of Worthington Cylinders GmbH (hereinafter also referred to as "**GTC**"). These GTC constitute an integral part of all sale agreements and delivery agreements as well as other agreements concluded between Worthington Cylinders GmbH (hereinafter also referred to as "**HTC**" or "**we**") and the purchaser (hereinafter also referred to as "**buyer**" together with HTC the "**Parties**"). Acceptance of the products sold hereunder shall constitute consent to these GTC and HTC herewith disagrees with diverging agreements, particularly any general terms of buyer or any attempt to alter, amend or modify any of the provisions. Diverging agreements are valid solely upon prior written acceptance by HTC or modification signed by an authorized representative of HTC and solely with respect to a specified transaction. Any terms, which may now or in the future appear on buyer's forms or communication, shall be rejected without further action of HTC.

Regarding already existing stable commercial relations, these GTC are valid for all future sale agreements, delivery agreements, maintenance agreements, service agreements and other agreements, unless otherwise agreed by HTC and buyer in writing.

Declarations and statements made by HTC in electronic form (i.e. via e-mail) are effective. Debts are payable at the seat of HTC.

### II. Applicable Law

All transactions and all provisions set forth hereunder as well as all claims arising from or in connection therewith shall be **subject to the laws of the Republic of Austria** save for its choice or conflict of law rules and principles. The application of the **United Nations Convention on Contracts for the International Sale of Goods (CISG)**, Choice and Conflict of Law Rules under Austrian law or any other jurisdiction shall be excluded. The provisions herein constitute the entire agreement between buyer and HTC, and no terms or conditions other than those stated herein and no agreement or understanding, oral or written, in any way purporting to modify these conditions shall be binding on HTC unless hereafter made in writing and signed by HTC's authorized representative.

### III. Dispute Resolution

Buyers based within the European Union or an EFTA State and HTC irrevocably agree that the **exclusive place of jurisdiction** for all disputes or claims arising out of or in connection with all agreements, contracts and/or transactions entered into with HTC under inclusion of these GTC, or any disputes arising out of or in connection with these GTC (including its inclusion in agreement, contract and/or transaction, its subject matter or validity) shall be the competent court for commercial matters at the **registered seat of HTC**. HTC shall furthermore be entitled to file claim at buyer's seat as well as at any other permitted jurisdiction.

Buyers based outside of the European Union or an EFTA State and HTC irrevocably agree that any dispute or claim arising out of or in connection with all agreements, contracts and/or transactions entered into with HTC under inclusion of these GTC, or any disputes arising out of or in connection with these GTC (including its inclusion in agreement, contract and/or transaction, its subject matter or validity) shall **be finally settled under the Rules of Arbitration of the International Chamber of Commerce** by one or more arbitrators appointed in accordance with the said rules. The place of arbitration shall be Vienna. However, HTC shall be entitled, at its own discretion, to alternatively take legal action at the seat of the court having jurisdiction over the buyer.

### IV. Order and Order Acknowledgment

All quotations are non-binding and subject to revision for errors and omission and to modification without notice, unless otherwise stated. All data and technical parameters included in the commercial offer as well as all agreements made by the Parties and orders placed by the buyer are binding solely if acknowledged in writing by HTC.

HTC reserves for itself the right to introduce structural modifications and to change technical data and design of the goods as a result of modernizations and technical progress, provided that, despite of the modifications introduced, the goods do not change their distinctive features and technical properties and the delivery of such goods is not at variance with crucial interest of the buyer or insofar as such modifications are not substantial and are reasonable for the buyer. The above-mentioned modifications and changes shall be notified to the buyer within a reasonable period of time.

The buyer is bound by its order from the date of receipt of the order by HTC. It is a condition of acceptance by HTC that complete specifications are supplied to HTC no later than seven (7) weeks prior to the confirmed delivery date stipulated in the order acknowledgment. All orders against quotations and all specifications named by buyer are



subject to HTC's final acceptance by HTC's order acknowledgment. The buyer is obliged to review the order acknowledgment and all conditions and specifications therein. If buyer does not raise any objections in writing immediately, no later than within seven (7) days upon receipt, those conditions and specifications are confirmed and agreed and cannot be modified, cancelled or terminated by the buyer in whole or in part, except with HTC's written consent, signed by a duly authorized representative of HTC. In the event a cancellation or termination is agreed to, HTC must be paid for all goods and services provided prior to cancellation or termination and be fully reimbursed for its fully loaded costs including costs of material purchased or committed to, fully burdened labor costs, reasonable overhead allocation, and a reasonable profit. Quotations, offers and price indications are for the whole of the goods, for which quotations are issued by HTC and HTC reserves the right to refuse acceptance of any order, which constitutes only part of the goods, forming the subject of the quotation, offer or tender.

## V. Prices

Prices specified in the commercial offer or stipulated in an agreement do not include cost of transport of goods to their destination indicated by the buyer, unless otherwise stipulated in separate written agreement concluded with HTC. Prices specified in the commercial offer or stipulated in an agreement do not include VAT, if applicable, unless otherwise stipulated.

HTC reserves for itself the right to adjust the price after expiry date of the commercial offer, prior to conclusion of the contract, without the necessity to justify such price adjustment.

## VI. Terms of Payment - Termination

If the goods are delivered in batches, the obligation to pay the price shall arise successively upon delivery of each successive batch of goods based on the invoice issued for a given batch of goods, unless otherwise agreed between HTC and buyer, in particular, if HTC and buyer have agreed that the payment shall be made after delivery of the last batch of the goods.

With regard to first-time buyers, HTC reserves the right to request references confirming their commercial reliability from previous suppliers.

Payment date is understood as such date on which the payment is received at the bank account of HTC.

If the buyer does not pay the purchase price HTC is entitled to withdraw from the contract after unsuccessful expiry of a grace period granted to the purchaser, unless such grace period is dispensable by law. HTC is furthermore entitled to claim damages for non-performance, unless the buyer is not responsible for the non-performance. In such cases the buyer is obliged to reimburse HTC in particular but not limited to for all costs, fees and expenses, necessary for its appropriate legal prosecution. Further claims and rights of HTC remain unaffected.

In case of buyer's delay or default of payment, HTC may charge interests in the amount of 9.2%-points above the base rate published by the Austrian National Bank. Further claims on the part of HTC remain unaffected. Moreover, in case of default all discounts for current payments become forfeited.

Buyer shall be prohibited from asserting any right to retention against claims by HTC, which are duly payable and may only set off such counterclaims against HTC's claims which have been approved by HTC or which are based on a valid and legally binding court decision. HTC is entitled to refuse performance of its obligations if, after conclusion of the contract, it becomes apparent that HTC's claim for payment is endangered by the buyer's inability to pay. HTC shall be entitled to fix a reasonable period within which the buyer shall, at its option, make payment or provide security concurrently with delivery. If the buyer fails to make payment or provide security within the time limit, HTC shall be entitled to withdraw from the contract in accordance with the law. Further claims and rights of HTC remain unaffected.

Unless otherwise stipulated in individual agreements, cheques and bills of exchange are not accepted by HTC.

## VII. Terms of Delivery

Deliveries, which are dispatched from HTC's production sites in accordance with buyer's order, must always be accepted by the buyer.

If HTC and buyer agree upon an Incoterm clause, the respective Incoterm clause as stipulated in the Incoterms 2020 shall apply, unless otherwise stated. Liability and risk shall be governed according to the respective Incoterm clause. HTC's responsibility ceases once goods are ready for dispatch and notice of readiness for dispatch is given to buyer unless otherwise stated in the agreed Incoterm clause.

If buyer fails to fulfil its obligations on time during the dispatch of goods, buyer shall bear the risk of damage or loss at the latest from the moment when such obligations should have been fulfilled. In this case HTC shall have no obligation to store the goods in a particularly protected manner. Furthermore, HTC shall have the right to charge any costs resulting from such storage of the goods to buyer's account. Further claims and rights of HTC shall remain unaffected. If HTC provides assistance to the buyer in the course of loading and dispatch, buyer shall fully indemnify and hold HTC harmless from any claims and disadvantages resulting thereof.

Compliance with the delivery time is subject to a correct, in particular timely, delivery of products to HTC, unless HTC is responsible for the reason for such incorrect delivery. In the event of incorrect or late delivery, HTC shall be entitled to withdraw from the agreement. In such case the buyer shall not be entitled to withdraw from the respective agreement governed by these GTC. HTC shall promptly inform buyer, if HTC makes use of its right to withdraw from the agreement and shall return to buyer any prepayments that may have been made. HTC is entitled to reschedule the delivery date due to reasons resulting from production or incorrect delivery from HTC's suppliers and inform buyer of such new delivery date. There will arise no legal consequences as a result of such delayed delivery if the delivery date is not missed for more than four (4) weeks by HTC and buyer shall not be entitled to any claims thereto.

## VIII. Extraordinary Events. Force majeure

In any of the following events, which either hinder or delay receipt of the goods on the part of the buyer, or production or delivery of the goods on the part of HTC, HTC shall not be liable in any way. Such events are in particular but not limited to: loss, damage or delays arising from wars and other military actions, strikes or labor disputes, fire, explosion, epidemics, material and significant breakdown, adverse weather conditions, shortage or lack of material, fuel or power, embargo, lockouts, cessation of labor, cyber-attacks, transport delays, the non-fulfilment of contractual obligations by a contractual partner of HTC, shortened hours of labor, accidents of any kind, perils of the sea or rivers, wars, natural disasters, official directive or similar, or any other cause or contingency whatsoever beyond our reasonable control. If, due to any such occurrence, HTC is unable to supply the entire demands for any goods specified, HTC may allocate production, inventory and deliveries (in a manner fair and reasonable to the extent that goods are not special or unique) and will notify buyer in good time of such delay or non-delivery. HTC may delay fulfilment of any obligation or withdraw from the contract or revoke confirmation of orders under reference to any of the above-mentioned circumstances. HTC is not obliged to compensate the buyer for damages caused by such suspension or termination. HTC's liability for damages resulting from slight and ordinary negligence is excluded.

## IX. Quality - Duty to Inspect

HTC will make its best efforts to ensure good material and workmanship and that the products are fit for use under the specifications as per order acknowledgment. HTC does not assume liability for the use of its products outside their agreed specifications. Commissioning and inspection, if requested by buyers or their agents, are to be carried out by HTC and shall be considered final there. All fees incurred in connection with the commissioning and inspection will be charged to buyer's account. Buyer must examine and inspect the goods promptly upon receipt. Any claim by buyer based upon or relating to any claimed defect in the products ascertained or ascertainable upon examination or inspection, including but not limited to any claim relating to size, type, quantity or shipping damage, must be reported to HTC immediately, at the latest within eight (8) days following the date of receipt of the goods by buyer in writing, otherwise any claim on whatsoever legal ground is forfeited. Buyer undertakes to describe the defects in its notification of HTC in writing. Due to the nature of the manufacturing process, over- or underdeliveries cannot be ruled out. In the event of an over- or under delivery the quantity delivered will be charged. If buyer wishes the exact number of ordered goods to be produced and delivered, HTC shall, if production allows for it, offer an option to produce and deliver the exact number against a surcharge to be agreed upon.

## X. Retention of Title

Ownership of the delivered goods with all rights and privileges remains with HTC until full payment of the agreed purchase price is made. For the duration of the retention of title, buyer shall be required to treat the goods subject to retention of title with care.

Buyer may only sell the goods subject to retention of title in the context of regular business operations. Buyer shall furthermore not be entitled to pledge any goods subject to retention of title, to assign them as security, or to dispose of them in any other way that may endanger ownership of HTC. In the event of pledges or other third-party interference, Buyer shall promptly notify HTC in writing and provide all information necessary, inform the third party of the ownership rights of HTC, and assist with any steps taken by HTC to protect the goods subject to retention of title. If the third party is unable to reimburse HTC for the judicial and nonjudicial expenses incurred for the assertion of the ownership rights of HTC, buyer shall be required to reimburse HTC for the resulting losses unless buyer is not responsible for the breach of duty.

Buyer hereby assigns any receivables from the resale of the goods with all ancillary rights to HTC, regardless of whether the goods subject to retention of title are resold with or without processing. HTC hereby accepts this assignment. If an assignment is not admissible, buyer hereby instructs the third-party debtor to exclusively make any payments to HTC. Buyer is revocably authorized to collect such receivables assigned to HTC as a trustee for HTC in its own name. The amounts collected shall promptly be forwarded to HTC. HTC may revoke the collection authorization from buyer as well as the right of buyer to resell goods for cause, in particular if buyer does not fulfill its payment obligations vis-à-vis HTC in an orderly manner, falls into default, stops its payments, or if insolvency proceedings or similar proceedings for the settlement of debts against the assets of buyer are requested by buyer itself, or the justified request of a third party for the opening of insolvency proceedings or similar proceedings for the settlement of debts against the assets of buyer is denied due to a lack of assets. In case of a blanket assignment by buyer, any claims assigned to HTC shall be explicitly excluded.

If so requested by HTC, buyer shall be required to notify the third party debtor promptly of the assignment and shall provide HTC with all information and documentation necessary for the collection.

In case of conduct violating the agreement, in particular in case of a default in payment by buyer, HTC shall, irrespective of its other rights, be entitled to withdraw from the agreement after expiration of a reasonable grace period set by HTC. Buyer shall promptly provide HTC or its agents with access to the goods subject to retention of title and hand them over. After a corresponding notification in due time, HTC may use the goods subject to retention of title for the satisfaction of its payable claims against buyer in other ways.

Buyer shall always process or modify the goods subject to retention of title on behalf of HTC. Buyer's expectant right to the goods subject to retention of title shall remain with the processed or transformed item. If the goods are processed or modified with other items which are not owned by HTC, then HTC shall obtain co-ownership in the new product in the proportion of the value of the supplied goods to the other processed items at the time of the processing or modification. The same shall apply if the goods are joined or mixed with other items which are not owned by HTC in such a way that HTC loses its full ownership. Buyer shall store the new products on behalf of HTC. Otherwise, the same provisions as for the goods subject to retention of title shall apply to the product created by processing or modification as well as joining or mixing.

If goods are delivered into other legal systems where this retention of title provision does not have the same security effect as in Austria, buyer hereby grants HTC a corresponding security interest. If this makes additional measures necessary, Buyer shall do anything to promptly provide HTC with such security interest. Buyer shall assist with all measures necessary and useful for the effectiveness and enforceability of such collateral rights.

## XI. Warranty and Liability

Claims for defects on the part of the buyer presuppose that the buyer has properly fulfilled its obligations to inspect the goods and give notice of defects to HTC in a proper manner (see para IX. "Quality, Duty to inspect" of these GTC). In the event of proven defective goods, HTC shall be entitled to supplementary performance ("Verbesserung"). For the purpose of supplementary performance, HTC will at HTC's choice replace the defective goods with non-defective goods at the place of original delivery ("Austausch") or correct the defective products ("Nachbesserung").

The warranty covers only such goods used in accordance with their purpose and installed in conformity with technical standards. The warranty responsibility does not cover inter alia:

- Defects resulting from use of the goods contrary to their purpose,
- Defects resulting from negligence, destruction, delayed notifying of defects,
- Defects resulting from incorrect installation by the buyer or third parties,
- All defects occurring as a result of mechanical damage,
- Goods, which were not stored properly.

If the goods are still in use despite having been found defective, the warranty claims of the buyer shall become forfeited.

HTC excludes any liability or compensation for defects to the extent that such defects are due to modifications to the design of the product or goods outside the agreed specifications by buyer even of a minor extent except upon a prior written consent by HTC. This applies also to repair of damages caused in the course of transport.

No allowance will be made for damage to adjustments, incidental or consequential damage, loss of profit, cost of capital, loss of contents, claims of customers for service interruptions or failure of supply, and costs and expenses incurred in connection with labor, overhead, transportation, installation or removal of products or substitute facilities or

supply sources. Any liability of HTC to pay damages is limited to the actual damage. Liability of HTC shall in no case exceed the total value of defective goods. HTC's liability for consequential damage, loss of profit and value of special preference is excluded. Where liability by HTC is excluded or limited, this shall apply as well to the personal liability of the employees, workers, staff, representatives and vicarious agents of HTC.

If HTC is not willing or unable to provide supplementary performance, or if supplementary performance fails twice, buyer may, at its discretion, withdraw from the contract or request an appropriate reduction in price. The same shall apply if supplementary performance fails, is unreasonable for the buyer, or is significantly delayed for reasons within HTC's area of responsibility.

The warranty period for buyer's claims for defects is twelve (12) months. The warranty period shall begin with the delivery of the goods. The period to claim liability for damages is twelve (12) months.

## **XII. Product Liability**

Buyer shall not modify the goods; in particular, buyer shall not modify or remove existing warnings about dangers in the event of improper use of the goods. If this obligation is not met, buyer shall, concerning their internal relationship, indemnify and hold HTC harmless from any third-party liability claims unless buyer is not responsible for the goods modification.

If HTC issues a product recall or warning due to a product defect in the goods, buyer shall assist to the best of its abilities with such measures that HTC considers necessary and useful and support HTC in this regard, especially in connection with the determination of the required customer data. Buyer shall be required to bear the costs and expenses of the product recall or warning unless, under product liability principles, it cannot be held responsible for the product defect. Further claims on the part of HTC shall remain unaffected.

Buyer shall promptly inform HTC in writing of any risks buyer becomes aware of when using the goods and of possible product defects.

## **XIII. Environmental Protection, Packaging and Regulatory Requirements**

HTC and Buyer agree to comply with all national and EU legislation relating to recycling of the purchased items and packaging thereof. This applies in particular to the following European Union legislative acts: DIRECTIVE (EU) 2019/904 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 5 June 2019 on the reduction of the impact of certain plastic products on the environment, European Parliament and Council DIRECTIVE 94/62/EC of 20 December 1994 on packaging and packaging waste and REGULATION (EU) 2019/1020 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 June 2019 on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011 and all applicable laws enacted in implementation of these legislative acts.

All commercial packaging of such tariff categories for which HTC is the primary obligated party pursuant to applicable laws enacted in implementation of the aforementioned legislative acts (in Austria the provisions of the Austrian Waste Management Act 2002) be exempted from obligations ("entpflichtet") at the collection and recycling system contracted by HTC.

Insofar as HTC is the primary obligated party and therefore incurs any cost and expenses for the disposal of the purchased goods (incl. costs for appointing a collection and recycling system), buyer agrees to fully bear such costs and expenses for disposal and/or to fully compensate HTC in this respect. HTC may only charge Buyer such costs actually incurred for disposal of the goods. In any event, HTC shall not be liable for any recycling costs incurred in connection with its products. HTC and Buyer are aware of the potential cost range for disposal via HTC or a third party and agree to this provision in full knowledge of the aforementioned.

## **XIV. Information Security and Data Protection - Compliance with Information Security Standards**

Buyer hereby acknowledges that HTC is certified according to TISAX (VDA ISA standard) and therefore subject to strict information security standards.

Buyer warrants applying at any time and in any process related to the transactions subject to the underlying contractual relationship an appropriate level of integrity, availability and confidentiality of data and information according to the TISAX-standard and other respective state of the art information security standards.

Buyer shall appoint and maintain during the process and fulfillment related to the transactions subject to the underlying contractual relationship a person responsible for information security and shall immediately notify such person or any change in such person to HTC by indicating its name, position, e-mail-address and telephone number.

HTC shall be entitled at its own expense to audit either by itself or by its advisors, the fulfillment of Buyers' obligations relating to information security at Buyers premises after appropriate advance notice during buyer's business hours.

To the extent HTC acts as a processor of personal data for Buyers (data controller), the data processing is governed by the clauses set out in the Data Processing Addendum.

## **XV. Right to Publish Information - Marketing**

Buyer agrees to the disclosure of the general fact that the parties are in a contractual relationship as well as marketing-relevant details of the respective transaction between the parties such as the transaction volume. Buyer therefore agrees that HTC discloses such information towards third parties, towards publishers of economic and other relevant industry publications or prospective customers as well as for general marketing measures and communication. This includes publications on websites, social media platforms, newspapers, etc.

## **XVI. Trade Secrets**

Buyer shall not divulge, disclose, reveal or communicate to any business entity or other person any trade secrets or other information recognizable as confidential, which Buyer may obtain by virtue of buyer's relationship with HTC. Such information or secrets are especially (but not exclusively): customers (including customer lists), sales prices (including price lists), costs, plans, technology, formulas, processes, policies, techniques, drawings, calculations, projects, know-how, trade practices, trade secrets, commercial, administrative and financial information and documents or other data considered by HTC to be confidential information. Buyer shall be liable for all damages and/or losses of HTC arising out of its action or practice breaching this duty, unless buyer is not responsible for such breach of duty. Such liability of non-disclosure of confidential information shall remain in force even if the underlying agreement is withdrawn from or terminated for whatever reason. Further claims and rights of HTC shall remain unaffected.

## **XVII. Compliance with Anti-Corruption Laws**

HTC and buyer agree that they shall not, in the performance of this contract or any act materially related thereto, whether directly or indirectly, commit or attempt to commit any act, which is in violation of any applicable anti-corruption or similar law, including, without limitation, the United States Foreign Corrupt Practices Act ("FCPA"). HTC and Buyer confirm that they are committed to strict compliance with anti-corruption laws, including without limitation, the FCPA. HTC and buyer hereby agree that they shall not: (a) make a payment of money or money's worth (such as a gift or a favor) or make an offer in this regard; or (b) promise to pay or authorize the payment of any money or money's worth, to any government official or political party, any employee or representative of the other party, or to any other person while intending or knowing that the same may have the effect of influencing decisions favorable to itself. It is hereby expressly declared that HTC and Buyer do not approve of such practices and that such mal practices will not be considered approved by the other party under any circumstance. Each party, upon reasonable cause to believe that the other party has failed to comply with this provision, shall be entitled to audit the relevant records of the suspected party and the suspected party shall be obligated to offer reasonable cooperation. Any breach of this clause by either party shall be considered a material breach of this contract and may at the option of the non-breaching party result in immediate termination of this agreement.

## **XVIII. Severability**

In the event that individual provisions of these GTC or individual provisions of the order, order acknowledgment etc. (all together the "agreement") should be or become invalid and/or contradict mandatory provisions, this shall not affect the validity of the remaining provisions of the agreement entered into with HTC. The parties undertake to replace such ineffective/invalid provision by a provision that comes as close as possible to the economic purpose of the ineffective/invalid provision in a legally effective manner. The above provision shall apply mutatis mutandis in the event of contractual gaps.