

General Terms and Conditions of Sale of Worthington Cylinders GmbH

All transactions listed overleaf shall be governed by these General Terms and Conditions of Sale of Worthington Cylinders GmbH. Worthington Cylinders GmbH (in the following „WCA“ or “we”) herewith disagree with diverging agreements, particularly any general terms of purchaser (hereinafter also referred to as “buyer”) or any attempt to vary any of the provisions. Diverging agreements are valid only upon prior written acceptance by WCA or modification signed by an authorized officer of WCA and with respect to a specified transaction only. Any terms which may now or in the future appear on buyer’s forms or communication shall be rejected without further action of WCA. Complaints are only accepted within eight (8) days of receipt of goods. Debts are payable at the seat of WCA. Declarations of WCA are also effective if they are made in electronic form (i.e. via Email). Austrian law applies. For buyers based within the European Union or an EFTA State the designated court of jurisdiction shall be the appropriate competent court in Vienna. All disputes arising out of or in connection with contracts with buyers based outside of the European Union or an EFTA State 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, the Seller shall be entitled, at its own discretion, to alternatively take legal action at the seat of the court having jurisdiction over the buyer. The applicability of the rules of cross reference of the Austrian Code of International Civil Law (IPRG) is explicitly excluded. The provisions herein constitute the entire agreement between buyer and WCA, 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 WCA unless hereafter made in writing and signed by WCA’s authorized representative. In case of contradictions between the English version and the German version of these General Terms of Sale the German version is relevant.

I. Order and Confirmation of an Order

All quotations are non-binding and subject to revision for errors and omission and to alteration without notice, unless otherwise stated. The purchaser is bound by his order from the date of receipt of the order. It is a condition of acceptance on our part that complete specifications are supplied to us latest seven (7) weeks prior to the confirmed delivery date stipulated on the order confirmation. All orders against quotations and all specifications named by the purchaser are subject to our final acceptance by our order confirmation. The purchaser is obliged to check the order confirmation and all the conditions and specifications therein. If purchaser does not raise any objections in writing immediately, latest within seven (7) days after 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 WCA’s written consent, signed by a duly authorized representative. In the event a cancellation or termination is agreed to, WCA must be paid for all goods and services provided prior to cancellation 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 given by us and we reserve the right to refuse acceptance of any order which constitutes only part of the goods, forming the subject of the quotation, offer or tender.

II. Terms of Payment

If the buyer is in delay or in default with any payment relating to obligations arising from the business relationship with WCA, WCA is not obliged to effect further deliveries and is moreover entitled to rescind the contract and claim damages for non-performance, whereby the purchaser is in this case obliged to reimburse WCA for all costs and expenses, which were necessary for appropriate legal persecution. In case of purchaser’s delay or default of payment, WCA may charge interests according to § 352 UGB (Austrian “Unternehmensgesetzbuch”). Moreover, in case of default all claims by WCA against the purchaser shall immediately become due and discounts for current payments are excluded. The purchaser is excluded from asserting any right to retention against claims by WCA which are duly payable and may only set off such counterclaims against WCA’s claims which have been approved by WCA or which are based on a valid and legally binding court decision. Unless otherwise stipulated in individual agreements, cheques and bills of exchange are not accepted by WCA. If insolvency proceedings are opened on the purchaser or WCA, one of these companies is liquidated, put under compulsory administration, a case by or against buyer under any applicable bankruptcy law is initiated and in case of breach of any or all provisions of the contract and/or the Terms and Conditions or one of these companies has such financial difficulties that the fulfilment of its obligations seems unlikely, both WCA and the purchaser have the right to withdraw from the contract, if the other party has not come up with sufficient securities to fulfil its contractual obligations within a deadline of ten (10) days to be set by the former party.

III. Terms of Delivery

Deliveries which are dispatched from WCA’s production sites must always be accepted by the purchaser. If the parties agree upon an Incoterm clause, the clause valid at the date of order confirmation shall apply, unless otherwise stated. Liability and risk shall be according to the respective clause. Our responsibility ceases once goods are ready for dispatch and notice of readiness for dispatch is given to the purchaser. If purchaser does not fulfil his obligations in the course of the dispatch of goods on time, purchaser will bear the risk of damage or loss. In this case WCA shall have no obligation to store the goods in a particularly protected way. Furthermore WCA shall have the right to charge any costs which result from the storage of the goods to purchaser’s account. If WCA provides any help to the purchaser in the course of loading and dispatch, purchaser will fully indemnify and hold WCA harmless from any claims and disadvantages resulting out of it.

In any event, which either hinders or delays the receipt of the goods on the part of the purchaser, or the production or delivery of the goods on the part of WCA, WCA shall not be liable in any way. Such events are especially: loss, damage or delays arising from strikes or labour disputes, fire, explosion, epidemics, material and significant breakdown, adverse weather conditions, shortage or lack of material, fuel or power, embargo, lock-outs, cessation of labour, transport delays, the non-fulfilment of contractual obligations by a contractual partner of WCA, shortened hours of labour, accidents of any kind, perils of the sea or rivers, wars, natural disasters, official directive or the like, or any other cause or contingency whatsoever beyond our reasonable control. If, due to any such occurrence, WCA is unable to supply total demands for any goods specified, WCA 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 seasonably that there will be a delay or non-delivery. WCA may delay fulfilment of any obligation or repudiate the contract or revoke confirmation of orders under reference to any of the before mentioned circumstances. WCA is not obliged to compensate the purchaser for damages caused by such suspension. WCA’s liability for damages resulting from slight and ordinary negligence is excluded. WCA will make its reasonably best efforts to ensure good material and workmanship, but it cannot be guaranteed that the design or dimensions of the goods supplied are suitable for the purpose for which, or the conditions under which, they are used. Testing and inspection, if requested by buyers or their agents, are to be carried out at WCA’s works and shall be considered final there. All fees incurred in connection with testing 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 ascertainable upon visual inspection, including any claim relating to size, type, quantity or shipping damage, must be presented to WCA within eight (8) days following the date of receipt of the goods by buyer. Such claims must be made within said time and are not within those items covered by the Warranty herein. In case WCA’s suppliers do not deliver or delay delivery, WCA cannot be made

responsible for its delay or default of delivery by the purchaser. WCA is entitled to cancel contracts governed by these general sales conditions if its suppliers do not fulfil their obligations within a reasonable period of time which WCA may set at its own discretion. WCA has the right to reschedule the delivery date due to reasons resulting from production and inform the purchaser of the new delivery date. There will be no legal consequences as a result of a delay with delivery if the delivery date is not missed for more than four (4) weeks by WCA and the purchaser shall not be entitled to any claims in that case. Due to the nature of the manufacturing process of forged products, over- or underdeliveries cannot be ruled out. The purchaser gives his explicit consent to that. In the case of an over- or underdelivery the quantity actually delivered will be charged. If the purchaser wishes that the exact number of ordered goods are produced and delivered, WCA shall, if production allows for it, offer him an option to produce and deliver the exact number against a surcharge to be agreed upon. The ownership of the delivered goods with all rights and privileges remains with WCA until complete payment of the agreed purchase price is made. The full retention of title to ownership of the delivered goods also remains in force even if the goods have been processed or altered in any form. The purchaser is expressly obliged to pass on WCA's retention of title to ownership to a third party, if the goods in question are resold, and WCA has not yet been fully reimbursed. In addition, the purchaser transfers his claim to the purchase price from a third party to WCA on account of payment, and confirms that no transfer of his claims has taken place (beforehand). In an individual case where the above described assignment is not possible for legal reasons, the retention of ownership expressly agreed upon also applies to purchase price claims which the purchaser is entitled to in the case of resale. In any case, the purchaser is obliged to inform WCA of the resale of delivered but not yet fully paid goods within seven (7) days, whereupon the third party must be named. If the purchaser does not fulfil the above obligations, he is liable for any damage which thereby ensues.

IV. Warranty and Liability

Defects have to be notified within eight (8) days after receipt of the material. Material proved to be defective will at WCA's choice be replaced at the place of original delivery or fixed or defects will be corrected in another way or WCA will grant a reduction of price. 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 labour, overhead, transportation, installation or removal of products or substitute facilities or supply sources. The purchaser is entitled to repudiate the contract or to demand an appropriate reduction of the price if repair or replacement of deliveries have failed. WCA excludes any liability or indemnification in case of improvements and corrections of goods by buyers even of a minor except upon a prior written consent by WCA. This applies also to repair of damages caused in the course of transport. Any liability of WCA to pay damages is limited to the actual damage. Liability of WCA shall in no case exceed the total value of defective goods. WCA's liability for consequential damage, loss of profit and value of special preference is excluded. The warranty period is six (6) months from take-over of the goods. The application of § 933b of the Austrian Civil Code (Allgemeines Bürgerliches Gesetzbuch, ABGB) is explicitly excluded.

V. Product liability

If the purchaser is not a consumer within the meaning of the Statute on Product Liability (Produkthaftungsgesetz, PHG), he is, in addition, obliged within his business liability insurance to obtain coverage for all claims that might arise in connection with or due to the use of the goods delivered by WCA and shall assign all rights stemming from claims against insurance companies to WCA. Furthermore, recourse to WCA by the purchaser, who is a non-consumer, for damage caused without intent is excluded. The purchaser shall indemnify WCA against any recourse by the party who suffers damage from the product being operated in the sphere of the purchaser. The purchaser waives the right to claim exemption from his liability by naming a party (§ 1 par 2 PHG) that would also be liable under PHG. The purchaser shall indemnify WCA against any recourse by a third party concerning all products made use of or resold by the purchaser.

VI. Trade Secrets

Buyer shall not divulge, disclose, reveal or communicate to any business entity or other person any trade secrets or other information which buyer may obtain by virtue of buyer's relationship with WCA. Such information or secrets are especially: 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 WCA to be confidential information. Buyer shall be liable for all damages and/or losses of the Seller arising out of its otherwise action or practice and shall promptly notify the Seller upon first written notification of the Seller. Such liability of non-disclosure of confidential information shall remain in force even the underlying contract is terminated or ended-up for whatever reason.

VII. Compliance with Anti-Corruption Laws

Both parties agree that they shall not, in the performance of this Agreement 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"). Both parties confirm that they are committed to strict compliance with anti-corruption laws, including without limitation, the FCPA. Both parties 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 expressly clarified that the parties 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 another 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 Agreement and may result in immediate termination of this Agreement, at the option of the non-breaching party.

Acceptance of the products sold hereunder shall constitute assent to these Terms and Conditions and Worthington hereby objects to and rejects any and all additional or different terms proposed by buyer, whether contained in buyer's purchasing or shipping release forms, or elsewhere. All proposals, negotiations and representations, if any, made prior and with reference hereto are merged herein. Any proposed additions, modifications, deletions or changes not in separate writings signed by WCA are rejected without further action of WCA.