



## **1. Order**

The purchase order terms and conditions set forth herein and on the purchase order to which these terms are attached, or are incorporated by reference (together with any specifications and other documents referred to herein or on the purchase order, collectively, this "Order"), are between the buyer identified in the purchase order ("Buyer"), and the seller identified in the purchase order ("Seller"). Buyer and Seller may be referred to below as a "Party" or the "Parties". This Order establishes the rights, obligations, and remedies of Buyer and Seller that apply to an Order issued by Buyer for the purchase of Seller's products and ancillary services ("Products"). This Order shall not constitute an acceptance by Buyer of any offer to sell, quotation or other proposal from Seller, even if referred to in this Order. Buyer expressly objects to and rejects any additional or different terms and conditions. These purchase order terms and conditions apply to this Order to the exclusion of all other terms and conditions. No additional or different terms or conditions, whether contained in Seller's acknowledgement, invoice, or in any other document or communication pertaining to this Order, will be binding on the Parties unless such additional or different terms are accepted in writing by an authorized representative of Buyer. This Order shall be irrevocably accepted by Seller upon the earlier of: (a) Seller's issuing any acceptance or acknowledgement of this Order; or (b) shipment of any part of the Products or other commencement of performance by Seller.

In these terms and conditions: (a) clause headings are for convenience and shall not be given effect in interpretation of this Order. (b) the term "including" shall mean and be construed as "including, but not limited to" or "including, without limitation", unless expressly stated to the contrary; (c) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular, and a reference to one gender shall include a reference to the other genders; (d) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time; and (e) reference to "writing" or "written" includes fax and email.

## **2. Price**

The price for Products shall be the price set forth in this Order and shall not be subject to change. Prices are payable in the currency stated in this Order and are inclusive of all delivery charges, handling, export and/or import duties, and sales, use, value added, excise or similar taxes. If any of the foregoing taxes and fees are levied against Buyer, Seller shall reimburse Buyer for those taxes and fees.

## **3. Payment Terms**

Amounts owed for Products are due sixty (60) days after Buyer's receipt of an accurate invoice for Products, each such invoice to be issued on completion of delivery of the Products that are the subject of this Order and to contain such information as Buyer may notify in writing to Seller at any time, but including as a minimum the Order number. If Buyer pays for Products within twenty (20) days of Buyer's receipt of an accurate invoice for Products, Buyer may take a two percent (2%) reduction on the amount owed. Buyer may deduct any amount owed by Seller to Buyer or Buyer's affiliates as a setoff against any amount due to Seller. If Buyer in good faith disputes any invoice, Buyer may withhold payment of the disputed invoice until resolved by mutual agreement between the Parties. Invoices shall be in English.

If Buyer fails to make any payment due to Seller by the due date for payment Seller may charge interest on the overdue amount at the rate of 3% per annum above HSBC Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. In relation to payments disputed in good faith, interest under this clause is payable only after the dispute is resolved, on sums found or agreed to be due, from fourteen (14) days after the dispute is resolved until payment. Any such dispute shall not entitle Seller to suspend performance of this Order.

## **4. Title; Delivery**

Time for delivery is of the essence of this Order. For the purposes of this clause only, Buyer may include Buyer's customer. Seller shall deliver the Products on the date set forth in Buyer's Order. Buyer may reject Products delivered prior to the date set forth in the Order and Products that fail to meet the warranties in this agreement. If Seller believes that delivery of the Products will be delayed, Seller shall



immediately inform Buyer of the anticipated delay, indicate the cause of delay, and use its best efforts to cure the anticipated delay. If Seller does not deliver Products in accordance with the delivery date on the Order, without prejudice to its other rights and remedies, (a) Buyer may reject the Products, and (b) Seller shall pay Buyer, at Buyer's option, either (i) the actual damages incurred by Buyer in respect of the delay, or (ii) four percent (4%) of the Order price for each day delivery is not made in accordance with the Order (up to 20% of the total price of the Order).

Seller shall adequately package all Products to prevent loss or damage during transit and shall comply with any packaging requirements provided by Buyer. Seller shall include a packing list with each delivery of Products that contains at least the following items:

- The Order number;
- Seller's part number;
- Buyer's part number;
- Quantity shipped; and
- Date of shipment.

Unless otherwise agreed, Products must be shipped DDP Buyer's facility named in Buyer's Order (Incoterms 2010). Seller will bear all risk of loss, damage, or destruction to the Products, in whole or in part, occurring before delivery to Buyer at the designated delivery location. Title to Products will pass to Buyer upon delivery. Seller shall not retain any security interest in Products after the passage of title, and shall deliver the Products free of all liens and encumbrances.

Seller shall not deliver the Products the subject of this Order by instalments unless expressly agreed in writing by Buyer.

## **5. Inspection**

The Products and Seller must meet the requirements set out in an applicable Order. Buyer may cancel this Order if Products or Seller fail to comply with the Order requirements.

Buyer may inspect Products and components of Products at any time prior to, during, and after delivery in order to assess Seller's work quality and/or compliance with this Order. Upon notice by Buyer, Seller will allow reasonable access to its facilities and assistance to Buyer, its customers, or representatives in order to inspect goods, materials and services related to the Products, including, raw materials, components, assemblies, work in process, tools and end products at all places, including sites where the Products are made, located, or the services are performed, whether at Seller's premises or elsewhere. Seller shall inspect the Products prior to delivery to ensure the Products meet all requirements of the Order and these terms and conditions.

If an inspection reveals the Products or components of Products fail or are likely to fail to comply with all requirements of the Order and these terms and conditions, Buyer may reject all or any portion of the Products. If Buyer rejects any portion of the Products, Buyer has the right, effective upon written notice to Seller, to: (a) rescind the Order in its entirety; (b) accept the Products at a reasonably reduced price; or (c) reject the Products and require replacement of the rejected Products. If Buyer requires replacement of the Products, Seller shall, at its expense, promptly replace the nonconforming Products and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective goods and the delivery of replacement Products. Should the Seller be in default with the replacement of the products, Buyer may purchase substitute goods in lieu of the rejected Products, setting a reasonable period of time and Seller shall indemnify Buyer on demand for any additional costs and/or losses incurred by Buyer in doing so. Buyer's, Buyer's representative's, and Buyer's customer's inspection of the Products and components of Products, or any of their approval of drawings, designs, or other documents, will not limit Seller's obligation to strictly comply with the requirements of the Order and these terms and conditions.

## **6. Representations and Warranties**



Seller represents and warrants that:

- (a) it has full rights and authority to enter into and perform according to this Order and its performance will not violate any agreement or obligation between it and any third party;
- (b) Products will be free from liens, security interests, or other encumbrances caused by or on behalf of Seller;
- (c) Products will be of merchantable or satisfactory quality and fit for the purpose for which they are purchased;
- (d) Products will strictly comply with Buyer's specifications for the Products and all specifications and representations included in drawings, designs, prototypes, samples, and Seller's catalogs, brochures, and other marketing materials;
- (e) Products on delivery and for a period of five (5) years after delivery will be free from defects in material, workmanship, and design;
- (f) Products and their use by Buyer will not infringe any third party's intellectual or industrial property rights;
- (g) Products will not require export licenses for Buyer to export or re-export the Products or any technology or data provided with the Products;
- (h) Products shall meet or exceed the highest industry standards applicable for the Products and shall comply with all applicable statutory and regulatory requirements; and
- (i) Seller warrants to Buyer and Buyer's customers that all information Seller provides Buyer pursuant to this Order will be complete and accurate.

If Products fail to comply with the warranties in this clause 6, without prejudice to Buyer's other rights and remedies, Seller shall, at Buyer's option, immediately repair, replace, or refund the purchase price of the affected Products, or otherwise rectify the failure as requested by Buyer, and Seller shall be liable for all reasonably associated costs and/or losses incurred by Buyer. In the event of imminent danger, Seller's failure to rectify defects or improper rectification of defects, Buyer may purchase substitute goods and services in lieu of requiring Seller to repair or replace the affected Products, and Seller shall indemnify Buyer on demand for any additional costs and/or losses incurred by Buyer in doing so.

The obligation to inspect and give notice of defects shall commence in all cases, even if the delivered goods have already passed into the ownership of the Buyer or have been handed over to his forwarding agent, carrier or other agent, only when they have arrived at the Buyer's business premises or at the agreed place of destination and a proper dispatch note is available.

A notice of defects shall in any case be deemed to have been lodged in good time if it has been sent in writing by the Buyer to the last known address of the Seller one month after the above-mentioned date.

The Seller shall draw the Buyer's attention to all risks which can reasonably be expected when using the product. During the entire warranty period, the burden of proof that the defect did not exist at the time of delivery lies with the Seller. The Seller also assumes the warranty for hidden defects, whereby the warranty period only begins to run from the Buyer's full knowledge of the defect.

In the case of delivery of spare parts, the Seller shall also be liable for defects and damage caused by the spare part to other parts or objects in the event of their defectiveness under the warranty. The warranty period starts anew in its entirety upon delivery and/or installation of spare parts for all goods.

#### Product Liability

The Seller must enclose instructions for use and warnings in German to his delivery. If possible and reasonable, such notices must be affixed to the delivered goods themselves.

Should the defectiveness of the delivered goods within the meaning of § 5 of the Product Liability Act (PHG) become evident or be recognized after acceptance of the delivery by the Buyer that the properties



of the product no longer correspond to the state of the art within the meaning of § 8 PHG, the Seller undertakes to take back such goods and to refund the purchase price in full.

If a claim is made against the Buyer under the PHG for goods supplied by the Seller, the Seller undertakes at its own expense to surrender without delay any evidence requested by the Buyer, such as in particular quality and examination protocols, certificates and the like. In such a case, the Seller also undertakes, irrespective of any fault, to compensate the Buyer for all damages or disadvantages arising from the Buyer's liability as well as related legal costs.

Buyer may initiate and implement a recall of Products, or take any other action in its reasonable discretion, if recall or such other action is required by applicable law or any regulatory authority, or in Buyer's reasonable discretion, it determines that a recall or such other action is warranted based on the fact that that the Products create a potential safety hazard or breach of applicable law or regulation. Seller shall pay for all costs arising out of or related to any such recall or other action.

### **7. Compliance**

Seller shall comply with all applicable laws, rules, orders, treaties, and regulations related to the production, manufacture, installation, sale, use, import, and export of all Products, whether local, state, federal or foreign. In addition, Seller shall comply at all times with applicable anti-corruption laws and regulations.

Seller shall comply with all legislation and regulatory requirements in force from time to time relating to the use of personal data and the privacy of electronic communications, including, without limitation (i) any data protection legislation from time to time in force in Austria including the Federal Data Protection Act (Datenschutzgesetz) or any successor legislation, as well as (ii) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to data protection and privacy.

Seller has and shall maintain all licenses, permits, consents, authorizations or other approvals required by applicable authorities related to the production, manufacture, installation, sale, use, import, and export of all Products, whether local, state, federal or foreign. Seller shall comply with all export and import laws of all countries involved in the delivery and sale of Products under this Order. Seller assumes all responsibility for shipments of Products requiring any government import clearance.

Seller further agrees to comply with Buyer's Code of Business Conduct and Ethics to be provided to Seller by Buyer. Seller may submit reports or questions regarding violations of law, policy or the Code of Business Conduct and Ethics through either a secure website ([www.jeld-wen.ethicspoint.com](http://www.jeld-wen.ethicspoint.com)) or by telephone at +1 855-244-4794.

### **8. Intellectual Property Ownership**

Seller owns or is the authorized licensee of all intellectual property rights related to the Products to the extent the Products have not been modified, customized, or designed for Buyer.

If and to the extent Products have been or will be modified, customized, or designed for Buyer, Seller hereby agrees to irrevocably assign and transfer to Buyer and does hereby assign and transfer to Buyer all of Seller's worldwide right, title, and interest in and to the Works for Hire (defined below) including all associated intellectual property rights. For purposes of this Order, "Works for Hire" include all rights in ideas, inventions, works of authorship, strategies, plans and data created in or resulting from Seller's performance under this Order, including all patent rights, copyrights, rights in proprietary information, database rights, trademark rights and other intellectual property rights. All Works for Hire shall at all times be and remain the sole and exclusive property of Buyer. Buyer will have the sole right to determine the treatment of any Works for Hire, including the right to keep it as trade secret, execute and file patent applications on it, to use and disclose it without prior patent application, to file registrations for copyright or trademark in its own name, or to follow any other procedure that Buyer deems appropriate. Buyer hereby grants a non-exclusive, non-assignable license, which is revocable with or without cause at any



time, to Seller to use any information, drawings, specifications, computer software, know-how and other data furnished or paid for by Buyer hereunder for the sole purpose of performing this Order for Buyer. Buyer may require Seller to use and label Products with Buyer's or its affiliates' trademarks, trade names, logos or other information ("Company Information"). Company Information is the sole property of Buyer or its affiliates, and Seller shall use Company Information strictly within the method and scope approved by Buyer.

Each Party hereby acknowledges and agrees that trade names and trademarks of the other Party, whether registered or unregistered, are the exclusive property of such other Party. Nothing herein shall be construed as granting any licence to Seller to use Buyer's trademarks. No such licence shall be valid unless provided in writing with specificity and signed by both Parties, and unless Seller agrees to comply with Buyer's trademark quality usage and control provisions provided by Buyer. In any case, any and all use of Buyer's trademarks shall inure to the benefit of Buyer, and Buyer may revoke such license at any time.

#### **9. Indemnification**

Seller shall, at its sole expense, indemnify, defend, and hold Buyer and its affiliates, employees, representatives and agents and its direct or indirect customers harmless ("Indemnified Parties") from and against any and all damages, legal actions, settlements, judgments, liabilities, claims, fines, penalties, costs, expenses or losses of any nature whatsoever (including all attorney's fees), arising from or relating to: (1) Seller's breach of its representations, warranties, covenants or obligations under this agreement; (2) product liability attributable to an actual or alleged defect in the design of, manufacture of, or warnings and instructions included with Products claimed to have been suffered by any person or entity; and (3) the provision of Products by Seller under this agreement

#### **10. Intellectual Property Indemnification**

Seller shall, at its sole expense, defend, indemnify and hold harmless Buyer and any Indemnified Parties against any and all losses arising out of or in connection with any claim that Buyer's or Indemnitee's use or possession of the Products infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. In no event shall Seller enter into any settlement of a claim made against Buyer without Buyer's or Indemnified Parties' prior written consent.

#### **11. Limitation of Liability**

**AS FAR AS IT DOES NOT OFFEND AGAINST COMPELLING RIGHT BUYER, ITS OFFICERS, DIRECTORS, AFFILIATES OR EMPLOYEES, SHALL NOT BE LIABLE TO SELLER OR ANY OTHER PERSON FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR DAMAGES TO BUSINESS REPUTATION HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN AN ACTION FOR CONTRACT, STRICT LIABILITY OR TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.**

#### **12. Insurance**

The Seller undertakes to take out insurance (including property and product liability insurance) with a reputable insurance company at its own expense and to maintain such insurance at a reasonable level to cover its possible obligations under or in connection with this contract during the execution of this order and 5 years after the last delivery of the products.

The Seller also undertakes to take out appropriate insurance within the meaning of § 16 PHG, whereby the Buyer reserves the right to require the Seller to provide proof of a corresponding financial security. If the Seller does not comply with such a request within 14 days, the Buyer is entitled to withdraw from the contract and may claim damages including lost profit.

#### **13. Termination; Order Change/Cancellation**



Buyer may terminate all or any part of an Order at any time with or without cause for undelivered Products. Termination is effective upon written notice. If Buyer terminates the Order for a reason for which the Seller is not at fault, the Buyer has to pay the Products received and accepted by Buyer prior to the termination and reimburse the Seller for all costs incurred up to the time of cancellation.

Completion or cancellation of an Order shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of completion or cancellation.

Specifications for Products may be changed only by written agreement between the Parties. Buyer may at any time make changes within the scope of this Order in any one or more of the following: (a) method of shipment or packing; (b) place and time of delivery; (c) amount of Buyer's furnished property; (d) quality; (e) quantity; or (f) scope or schedule of goods and/or services. Seller shall not proceed to implement any change until such change is provided in writing by Buyer. If any changes cause an increase or decrease in the cost or schedule of any work under this Order, an equitable adjustment shall be made in writing to the Order price and/or delivery schedule as applicable. Any Seller claim for such adjustment shall be deemed waived unless asserted within thirty (30) days from Seller's receipt of the change or suspension notification and may only include reasonable, direct costs that shall necessarily be incurred as a direct result of the change.

#### **14. Special Tooling; Ancillary Services**

Buyer may provide patterns, dies, fixtures, molds, jigs or other tools or directly or indirectly pay for tools for use in making Products at Seller's facilities ("Special Tooling"). Unless approved in writing by Buyer, Seller shall not remove or relocate any Special Tooling from Seller's facilities, make any changes to Special Tooling, or reverse engineer any Special Tooling. Seller shall use all Special Tooling solely for manufacturing Products as specified by Buyer in writing. Special Tooling shall remain Buyer's property, be segregated from Seller's property, and be individually marked as Buyer's property. Seller shall maintain Special Tooling in good condition and replace it at Seller's cost if lost, damaged, destroyed, or otherwise rendered unfit for use through the fault of the Seller in each case. Upon Buyer's request, Seller shall transfer possession of the Special Tooling to Buyer free and clear of liens and encumbrances and at the time and place designated by Buyer.

If Seller provides any ancillary services ("Services") to the sale of the Products including without limitation, Product installation, repair, or maintenance, Seller represents and warrants that the Services will be performed (a) in compliance with all applicable national, state, provincial, or local laws, statutes, rules, regulations or ordinances; and (b) in a good and workmanlike manner by qualified personnel possessing the necessary professional, technical or other background and training. Buyer will not be obligated to pay for Services that Buyer either: (1) determines to be unsatisfactorily performed; or (2) has not expressly agreed to pay for. Seller bears all expenses of providing Services except as may be assumed by Buyer in writing. Personnel assigned to perform Services are by Seller shall be under the control and supervision of Seller and will not be regarded as employees or agents of Buyer

#### **15. Confidentiality**

Any information, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" that Buyer conveys to Seller, including but not limited to, product designs, customer information, business processes, trade secrets, business plans, forecasts, and financial information, considered non-public, confidential or proprietary by Buyer is **confidential information**. Seller shall use the confidential information solely for the purpose of performing the Order and may not disclose or copy confidential information unless authorized by Buyer in writing. Seller may disclose confidential information to its employees who (1) have a bona-fide need to know the information to perform Seller's duties under this agreement, and (2) are bound by a duty of confidentiality to Seller greater than or equal to Seller's duty of confidentiality under this agreement. Seller shall, at Buyer's option, return or destroy confidential information at the Buyer's request or at the termination of this agreement, whichever occurs first. Seller shall be responsible for any breach of these obligations by any party to whom it discloses Buyer's confidential information. This Section shall not apply to information that is: (a) in the public domain; (b)



known to the Seller at the time of disclosure; or (c) rightfully obtained by the Seller on a non-confidential basis from a third party.

#### **16. Changes**

Seller shall notify Buyer in writing in advance of any and all: (a) changes to the Products, their specifications and/or composition; (b) process changes; (c) plant and/or equipment/tooling changes or moves; (d) transfer of any work hereunder to another site; and/or (e) sub-supplier changes, and no such change shall occur until Buyer has approved such change in writing. Seller shall be responsible for obtaining, completing and submitting proper documentation regarding any and all changes, including complying with any written change procedures issued by Buyer.

#### **17. Non-exclusivity**

Buyer may purchase Products and products similar to or competitive with Products from any person or entity. Seller may sell Products and products similar to or competitive with Products to any person or entity.

#### **18. Publicity**

Without the prior written consent of Buyer and unless otherwise required by law, Seller shall not make public or otherwise disclose to any person or entity that a business relationship exists between Buyer and Seller.

#### **19. Law/Dispute Resolution**

This Order and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of Austria. The Parties expressly disclaim the application of the United Nations Convention on Contracts for the International Sale of Goods and the Austrian conflict of law rules.

If Seller and Buyer have a dispute, the Parties agree to submit any such dispute shall be finally settled under the Rules of Arbitration and Conciliation of the ICC (the "ICC Rules") by one or three arbitrators appointed in accordance with such ICC Rules. The place for arbitration shall be London, England, and proceedings shall be conducted in English. The award shall be final and binding on both Buyer and Seller, and the Parties hereby waive the right of appeal to any court for amendment or modification of the arbitrators' award.

Alternatively, the Buyer can also sue at the general place of jurisdiction of his company headquarters. In this case, the objection that arbitration has priority is excluded.

#### **20. Language**

The Parties have expressly required that these terms and conditions be prepared in the English language and if they are translated into any other language, the English language version shall prevail. Any notice given under or in connection with this Order shall be in the English language. All other documents provided under or in connection with this Order shall be in the English language or accompanied by a certified English translation. If such document is translated into any other language, the English language version shall prevail.

#### **21. Third Parties**

Clause 9 is entered into for the benefit of each Indemnified Party, each of which may enforce it as named as a Party hereto. The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Order are not subject to the consent of any other person, including any Indemnified Party.

#### **22. Relationship between the Parties.**

The relationship between Buyer and Seller is solely that of independent contractors and nothing in this Order or otherwise shall be construed or deemed to create any agency, partnership, joint venture or other



form of joint enterprise, employment or fiduciary relationship between the Parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

### **23. Entire Agreement**

This Order, with documents as are expressly incorporated by reference, is intended as a complete, exclusive and final expression of the Parties' agreement with respect to the subject matter herein and supersedes any prior or contemporaneous agreements, whether written or oral, between the Parties. No course of prior dealings and no usage of the trade shall be relevant to determine the meaning of this Order even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. No claim or right arising out of a breach of this Order can be discharged in whole or in part by a waiver or renunciation unless supported by consideration and made in writing signed by the aggrieved party. Either party's failure to enforce any provision hereof shall not be construed to be a waiver of such provision or the right of such party thereafter to enforce each and every such provision. Buyer's rights and remedies in this Order are in addition to any other rights and remedies provided by Law, contract or equity, and Buyer may exercise all such rights and remedies singularly, alternatively, successively or concurrently. Section headings are for convenience and shall not be given effect in interpretation of this Order. The term "including" shall mean and be construed as "including, but not limited to" or "including, without limitation", unless expressly stated to the contrary. The invalidity, in whole or in part, of any section or paragraph of this Order shall not affect the remainder of such section or paragraph or any other section or paragraph, which shall continue in full force and effect. Further, the Parties agree to give any such section or paragraph deemed invalid, in whole or in part, a lawful interpretation that most closely reflects the original intention of Buyer and Seller. All provisions or obligations contained in this Order, which by their nature or effect are required or intended to be observed, kept or performed after termination or expiration of this Order shall survive and remain binding upon and for the benefit of the Parties, their successors (including without limitation successors by merger) and permitted assigns.