

Wilo – Terms and conditions of supply



All pages must be initialed and dated

The following conditions shall apply to and form part of any contract for the supply of goods by Wilo Australia Pty Ltd to the Customer including any and all contracts arising from any orders received from the Customer both verbal and written for goods or services of the same or similar type to those goods and services to which this contract applies. These conditions shall terminate, cancel and supersede any previous written or oral agreements, understandings or customs (if any) entered into between Wilo Australia Pty Ltd and the Customer. These conditions of supply replace any previous conditions of supply and may be changed by written agreement between the Customer and Wilo Australia Pty Ltd.

1. Offer and Acceptance

No quotation for the supply of goods or services provided by Wilo Australia Pty Ltd will constitute an offer for acceptance by the Customer. Any order placed by a Customer pursuant to any quotation given by Wilo Australia Pty Ltd is not binding on Wilo Australia Pty Ltd unless and until accepted in writing by Wilo Australia Pty Ltd.

2. Purchase Orders

Wilo Australia Pty Ltd will accept no order unless signed by the Customer or the Customer's agent, containing the order number and a full description of the goods to be supplied.

3. Price of Goods

The price charged for the supply of goods shall be the price effective on the date of order, unless specifically quoted at a fixed price for specific period or otherwise agreed in writing, notwithstanding that delivery may be delayed by agreement or otherwise.

4. Variations to Goods

Wilo Australia Pty Ltd reserves the right to improve or vary the goods and thereby change the specification of the goods without notice to the Customer and without incurring any liability to the Customer.

5. Indemnity

Without prejudice to any other rights Wilo Australia Pty Ltd may have, the Customer shall indemnify Wilo Australia Pty Ltd for any loss, damage or expense incurred by Wilo Australia Pty Ltd for any breach of any term of these conditions or where the Customer cancels any order or part thereof after the order has been accepted by Wilo Australia Pty Ltd.

6. Delivery

- (a) Delivery to the Customer shall be deemed to be effected when the goods are delivered to the Customer or the Customer's agent or Transport agent.
- (b) All goods shall be at the Customer's risk immediately upon delivery to the Customer or into the Customer's custody, i.e. The Customer's agent. The Customer shall insure the goods against loss or damage at the Customer's own expense.
- (c) If the Customer is indebted to Wilo Australia Pty Ltd and the Customer makes any claim pursuant to any such insurance policy, then that claim shall be made as trustee of Wilo Australia Pty Ltd and any moneys received pursuant to the claim shall be received as trustee for Wilo Australia Pty Ltd.
- (d) Wilo Australia Pty Ltd shall not be liable for any loss or damage (including consequential loss or damage) arising from delay in delivery of the goods ordered, or failure to deliver or supply any goods as a result of any cause or contingency whatsoever and the Customer shall accept and pay for the goods notwithstanding the delay or late delivery.
- (e) The Customer shall be responsible for all costs arising out of or incidental to the supply of goods including freight costs, unless otherwise agreed in writing.
- (f) Wilo Australia Pty Ltd will not accept responsibility for any short delivery or discrepancy in the quantity of goods delivered unless:
 - (i) Notification of the same is received from the Customer (confirmed in writing) within three (3) days after the date of delivery.
 - (ii) An inspection of the goods delivered, satisfactory to Wilo Australia Pty Ltd is undertaken by Wilo Australia Pty Ltd at its option.
- (g) The liability of Wilo Australia Pty Ltd with respect to proven short delivery is limited to the replacement of the missing goods.
- (h) The Customer shall be responsible for and indemnify Wilo Australia Pty Ltd for any loss or damage to the goods from the time of delivery until payment in full.
- (i) If the delivery of the goods or performance of services is affected by way of part delivery or performance, Wilo Australia Pty Ltd shall be entitled to invoice the Customer for a Pro-rata payment in respect thereof.
- (j) Wilo Australia Pty Ltd, for any reason is able only to make partial delivery of goods, the Customer agrees to accept such deliveries and pay the price of such goods as invoiced by Wilo Australia Pty Ltd.
- (k) Deliveries to third parties may be arranged at the request of the Customer but are subject to the acceptance of Wilo Australia Pty Ltd. Goods delivered to third parties pursuant to this sub-clause shall be deemed delivered to the Customer.

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(l) Request for split deliveries may be accepted at Wilo Australia Pty Ltd.'s discretion but may incur an extra fee.

7. Storage

Where Wilo Australia Pty Ltd notifies the Customer that the goods are ready for delivery and the Customer requests Wilo Australia Pty Ltd to hold the goods on the Customers behalf or refuses to accept delivery, then those goods shall be held by Wilo Australia Pty Ltd at the Customers risk and Wilo Australia Pty Ltd shall be entitled to charge a reasonable storage fee in respect of those goods.

8. Retention of Title

(a) Ownership of the goods shall not pass to the Customer until payment by the Customer of all moneys owing by the Customer to Wilo Australia Pty Ltd. Until the payment of all outstanding moneys the Customer shall hold the goods as Bailee for Wilo Australia Pty Ltd.

(b) Where property of the goods has not passed to the Customer, Wilo Australia Pty Ltd has the right to enter the premises of the Customer and retake possession of the goods and to resell the goods notwithstanding the occurrence of any of the following events:

(i) A receiver or a receiver and manager of the Customer is appointed;

(ii) An administrator of the Customer is appointed;

(iii) Winding up proceedings are commenced against the Customer;

(iv) Being a natural person the Customer commits an act of bankruptcy or becomes insolvent or bankrupt.

(c) The Customer shall have the right to sell the goods in the ordinary course of business, as agent for Wilo Australia Pty Ltd and shall have a fiduciary obligation to Wilo Australia Pty Ltd with respect to the goods and the proceeds of the on-sale.

(d) Until the goods are sold by the Customer, or paid for in full, the Customer shall store the goods separately from its own and in such a manner as to show clearly that they are and remain the property of Wilo Australia Pty Ltd.

(e) Upon sale of the goods or any part thereof by the Customer, the Customer shall keep the proceeds of such sale in a separate account on behalf of Wilo Australia Pty Ltd and shall apply such proceeds only to the payment of the purchase price to Wilo Australia Pty Ltd.

(f) The Customer shall account to Wilo Australia Pty Ltd in respect of goods, which are on sold by the Customer as soon as the proceeds of sale are received by the Customer.

(g) The property in the goods supplied shall pass from Wilo Australia Pty Ltd to the Customer upon payment by the Customer to Wilo Australia Pty Ltd of all money owing to Wilo Australia Pty Ltd in respect of all goods supplied by Wilo Australia Pty Ltd.

9. Personal Property Securities

(a) In this clause, 'financing statement', 'financing change statement', 'security agreement' and 'security interest' have the meanings given to those terms by the Personal Property Securities Act 2009 (Cth) (PPSA).

(b) The Customer acknowledges and agrees that these terms and conditions: (i) constitute a security agreement for the purposes of the PPSA; and

(ii) create a security interest in:

(A) all Goods previously supplied by Wilo Australia Pty Ltd to the Customer (if any);

(B) all Goods that will be supplied in the future by Wilo Australia Pty Ltd to the Customer;

(C) the proceeds of sale of all Goods previously supplied or to be supplied; and

(D) all present and after acquired property of the Customer, to secure payment of all moneys (including but not limited to the Price and any interest) owing by the Customer to Wilo Australia Pty Ltd. From time to time under these terms and conditions and under any other agreement or arrangement between the Customer and Wilo Australia Pty Ltd.

(c) The Customer undertakes to:

(i) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Wilo Australia Pty Ltd may reasonably require to:

(A) register a financing change statement in relation to a security interest on the PPS Register and otherwise do all things necessary and required by Wilo Australia Pty Ltd to ensure that any security interest registered by Wilo Australia Pty Ltd is a perfected security interest under the PPSA;

(B) register any document on any register reasonably necessary to secure Wilo Australia Pty Ltd.'s interest under these terms and conditions;

(C) register any other document required to be registered under the PPSA; or (D) correct a defect in a statement referred to in this clause 9(c)

(ii) indemnify, and upon demand reimburse, Wilo Australia Pty Ltd for all expenses incurred in registering a financing statement or financing change statement on the PPS Register or releasing any Goods that are the subject of a security interest;

(iii) not make an amendment demand in respect of a security interest, apply to the Registrar to register a financing change

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statement in respect of a security interest, without the prior written consent of Wilo Australia Pty Ltd; and
(iv) immediately advise Wilo Australia Pty Ltd of any material change in the Customer's business practices of selling the goods which may result in a change in the use of the goods by the Customer or in the nature of the proceeds derived from the sale of the Goods.

(d) Wilo Australia Pty Ltd and the Customer agree that sections 96 and 125 of the PPSA do not apply to the security interest created by these terms and conditions.

(e) The Customer hereby waives its rights to receive notices, information or statements (as the case may be) under sections 95, 118, 121(4), 130, 132(3) (d) and 132(4) of the PPSA. (f) The Customer waives its rights as a grantor and/or a Customer under sections 142 and 143 of the PPSA. (g) Unless otherwise agreed to in writing by Wilo Australia Pty Ltd, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA. (h) The Customer unconditionally ratifies any actions taken by Wilo Australia Pty Ltd under this clause 9. (i) The Customer irrevocably appoints Wilo Australia Pty Ltd to be its attorney to do such acts and execute such documents as the Customer could personally do or execute (including the appointment of a substitute attorney) which in the opinion of Wilo Australia Pty Ltd (acting reasonably) is necessary or expedient to give effect to any right, power or remedy conferred on Wilo Australia Pty Ltd by these terms and conditions or the PPSA and to give effect to the matters contemplated by these terms and conditions. (j) The provisions of this clause 9 will survive termination of these terms and conditions or any other agreement between Wilo Australia Pty Ltd and the Customer for the sale of Goods, for whatever reason.

10. Limitation of Liability

(a) Subject to the provisions of the Competition and Consumer Act 2010 (Cth) the following sub-clause applies in respect of any of the goods or services supplied under this contract.

(b) Liability for a breach of a condition or warranty under this contract (other than any warranty or condition imposed by the Consumer Act 2010 (Cth)) is limited: – In the case of goods to any one of the following as determined by Wilo Australia Pty Ltd:

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- (i) the replacement of the goods or the supply of equivalent goods;
- (ii) the repair of the goods;
- (iii) the payment of the costs of replacing the goods or of acquiring similar goods;
- (iv) the payment of the cost of having the goods repaired; and
- (v) in the case of services to any one of the following as determined by Wilo Australia Pty Ltd:
 - (A) supplying of the services again;
 - (B) the payment of the cost of having the services supplied again.

11. Warranty

(a) Except for any warranty expressly given by Wilo Australia Pty Ltd, all other conditions and warranties whatsoever whether statutory or otherwise are hereby excluded insofar as the same may be lawfully excluded by agreement between the parties to the contract.

(b) Freight and insurance for all goods returned to Wilo Australia Pty Ltd for warranty assessment must be pre-paid. Wilo Australia Pty Ltd will not accept liability for the costs of disassembly, assembly, and installation.

(c) The Wilo Australia Pty Ltd warranty covers product and material defects and does not cover wear and tear. The installation must be in accordance with Wilo Australia Pty Ltd's printed installation and operating instructions.

(d) Warranty is granted to the original user only and the warranty period varies from product to product and is as set out in the current published Price Book. (e) Any site condition or specification not known or advised to Wilo Australia Pty Ltd at the time of offering or ordering, which affects the operation of the supplied goods, will be the responsibility of the customer. Warranty will be void under these conditions and all costs related to repair will be the customer's responsibility. (f) Warranty is void if the goods supplied are operated at a duty point other than that specified and quoted.

(g) Warranty is void if goods supplied by Wilo Australia Pty Ltd are stored for a period of time before installation and operation, which are not in accordance with the Operation and Installation Manual for that product.

(h) Warranty is void if protection devices (thermistors, water in oil etc.) are installed in the goods but not used or monitored.

(i) Any products supplied that have not been manufactured by Wilo Australia Pty Ltd shall be subject to the warranty terms of the manufacturer.

(j) Warranty is void if the customer attempts to repair the goods and they subsequently fail.

12. Payment

(a) Wilo Australia Pty Ltd shall be entitled to request the payment of a deposit of any such amount, as it thinks fit. The extension of credit shall be at the absolute discretion of Wilo Australia Pty Ltd.

(b) Where credit is extended to the Customer by Wilo Australia Pty Ltd the Customer shall pay the outstanding amount, without deduction, within the term offered by Wilo Australia Pty Ltd in the Credit Account Application Form.

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- (c) Without in any way limiting Wilo Australia Pty Ltd.'s right to require payment in full on the due date Wilo Australia Pty Ltd may charge interest on any overdue amount at the rate equal to the then prevailing Standard Contract Default Rate as published by the Queensland Law Society calculated on a daily basis for each day payment remains overdue.
- (d) The Customer agrees and consents to Wilo Australia Pty Ltd using the services of a Credit Agency from time to time to obtain information concerning the Customer (and where applicable its directors and guarantors) in order to assess the Customer's creditworthiness.
- (e) Where the Customer fails to make payment on the due date for any goods or services supplied by Wilo Australia Pty Ltd, or being a natural person commits an act of bankruptcy or becomes insolvent or bankrupt, or being a corporation by any act or omission enables the appointment of an administrator, trustee, receiver, receiver and manager or official liquidator, Wilo Australia Pty Ltd may without prejudice to any other right it may have;-
- (i) withhold any further deliveries of goods or performance of services required under any contract; or
- (ii) suspend or terminate performance of any other contracts which Wilo Australia Pty Ltd has with the Customer; or
- (iii) retain a lien on any goods of the Customer held by Wilo Australia Pty Ltd.
- (f) A statement in writing signed by a manager or director of Wilo Australia Pty Ltd as to the moneys owing hereunder in respect of the account of the Customer on the due date mentioned in that statement shall be prima facie evidence of the indebtedness of the Customer to Wilo Australia Pty Ltd.
- (g) In the event that the Customer (being a corporation) is rendered insolvent and Wilo Australia Pty Ltd is unable to secure the return of the goods (for whatever reason), the director/s of the Company shall be personally liable, both jointly and severally, to Wilo Australia Pty Ltd for the full replacement cost of any such goods, notwithstanding that part of the moneys owing in relation to those goods may have already been paid.
- (h) Wilo Australia Pty Ltd reserves the right to commence recovery action on any overdue amount without notice to the customer. Any legal or collection costs incurred in the recovery of any overdue amounts will be recoverable from the customer.

13. Cancellation

No order may be cancelled except with consent in writing and on terms which will indemnify Wilo Australia Pty Ltd against all losses. Wilo Australia Pty Ltd shall be entitled to cancel the order by notifying the customer in writing if fulfillment is impossible within a reasonable period of time because of an incident of force majeure beyond Wilo Australia Pty Ltd.'s control. The same applies in the case of delayed or faulty delivery from a sub-supplier, in the event of such incidents, Wilo Australia Pty Ltd shall not be liable to pay damages to the customer.

14. Goods Returned for Credit

- (a) Subject to the prior written approval, goods may be returned to Wilo Australia Pty Ltd and credited to the Customer's account if returned to Wilo Australia Pty Ltd within 14 days of delivery, to Wilo Australia Pty Ltd.'s premises, in original packing in unsoiled, undamaged and reasonable condition. The goods must be accompanied by a delivery docket stating original invoice number, date of purchase, reason for return and an authorised return number from Wilo Australia Pty Ltd.
- (b) No goods will be accepted by Wilo Australia Pty Ltd for Credit if returned after a period of 14 days unless prior arrangements have been made.
- (c) No goods will be accepted by Wilo Australia Pty Ltd for Credit if the said goods were made to order.
- (d) Wilo Australia Pty Ltd reserves the right to charge a fee of 15% of the net cost price for the return of any goods.

15. Drawings and Documentation

(a) all drawings and descriptions supplied shall remain the property of Wilo Australia Pty Ltd and may not be copied, reproduced, passed onto or in any other way communicated to a third party without permission from Wilo Australia Pty Ltd. The ownership of descriptions necessary for the proper installation, starting, operation and maintenance of the supplied products shall pass to the customer upon payment. However, Wilo Australia Pty Ltd may demand that this data is treated as confidential information. (b) Unless otherwise agreed upon by Wilo Australia Pty Ltd in writing, standard Wilo Australia Pty Ltd documentation shall be provided in all cases. A variation to standard documentation requires prior written approval and may be subject to additional costs. Wilo Australia Pty Ltd shall not be liable for any delays as a result of noncompliance with non-standard documentation requests.

16. Guarantee required by Wilo Australia Pty Ltd, where the Customer:

- (a) is a proprietary limited company; or
- (b) is a person to whom Wilo Australia Pty Ltd would not otherwise supply goods on credit without the assurance of a guarantor; Wilo Australia Pty Ltd will not supply goods on credit unless and until the guarantee annexed hereto is executed by a person of acceptable financial standing and credit worthiness as determined by Wilo Australia Pty Ltd in its sole discretion.

17. Applicable Law

These conditions of supply shall be governed by and construed with the laws of Queensland and the parties agree to submit to the nonexclusive jurisdiction of the Courts of Queensland in Brisbane.

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Full Trading Name

Full Business Name

ABN

Registered Address

Business Address

Postal Address

Delivery Address

Phone

Fax

Email

Website

I/We acknowledge that I/we have the full authority to sign these Terms and Conditions of Supply on behalf of the abovementioned business:

Signature

Name

Position held

Date

DD

MM

YYYY

Signature

Name

Position held

Date

DD

MM

YYYY