

## **GENERAL TERMS & CONDITIONS**

### **for Watts Benelux BVBA**

#### **I. Terms & conditions for sales**

##### **1. *Applicability***

These general terms & conditions apply to all quotations, contracts and supplies made by Watts Benelux BVBA, with registered office at Beernemsteenweg 77A, 8750 Wingene, Belgium (hereafter “the Seller”).

The legal relationship between you (hereafter “the Buyer”) and the Seller is governed exclusively by these general terms & conditions and by the special conditions (hereafter collectively referred to as the “Agreement”). The special conditions shall take precedence in the event of any inconsistency or discrepancy between the general terms & conditions and the special conditions.

All other terms, including those used by the Buyer, will be deemed not to exist and are hereby explicitly excluded, with no further requirement on the part of the Seller to object to them in any way. They may not detract from the validity and applicability of the Seller’s general terms & conditions except where there is a specific written agreement to that effect between the parties. In such cases, these general terms & conditions will nonetheless be valid in a supplementary manner.

These general terms & conditions have been communicated to the Buyer before conclusion of the Agreement. By accepting a quotation and issuing an order, the Buyer is acknowledging receipt of the general terms & conditions, confirming its understanding of them and accepting them unconditionally.

There may not be any tacit deviation from these general terms & conditions. The mere tolerance by the Seller of conduct that is in breach of the Agreement does not imply any renunciation by the Seller of the contents of these general terms & conditions.

##### **2. *Quotations***

Quotations are valid for a period of 30 days after the date when they are issued. Quotations are valid as a whole and are not sub-divisible. They are merely a proposal issued by the Seller and are not binding upon the Seller.

The information, drawings and other information provided by the Buyer are deemed to be correct and complete and they serve as the basis for the Seller’s quotation. The Buyer always bears responsibility for the choice of goods that are ordered. The goods that are sold are standard items that have not been produced specifically for the needs of the customer (unless they qualify as Highly Customized Products). In any event the Seller does not produce any special advice or study for the choice of the product for the Buyer unless there is a specific agreement to that effect. The Seller may not therefore be held liable if it transpires that the goods that are sold cannot be applied for the use or purpose contemplated by the Buyer.

### **3. Confirmation of order**

An order, whether verbal or in writing, is irrevocably binding on the Buyer but is only binding on the Seller once it has been confirmed by the Seller in writing. In other words, the Buyer offers to contract on the basis of the quotation it receives and this offer may then be accepted – or not – by the Seller. A binding Agreement between the two parties is only concluded after such a confirmation of the order.

### **4. Highly Customized Products**

Highly Customized Products are special or modified products which are adapted to specific customer needs and requirements and for which the Seller does not have an alternative future use. Highly Customized Products are not destined to be sold to other customers, except to the Buyer who ordered it.

In the event that the Buyer cancels an order for Highly Customized Products for reasons which are not imputable to the Seller, the Seller is entitled to charge to the Buyer and Buyer shall compensate the Seller for an amount equal to the Sellers' costs and expenses incurred in performing the order until receipt of the notice of cancellation.

Upon request of the Buyer, the Seller will detail his costs and expenses which will in total in no case be higher than the agreed purchase price.

The Buyer is entitled to prove that the Seller incurred a lower damage or no damage at all.

### **5. Intermediaries (trade representatives or agents)**

Except for those cases notified in advance and in writing by the Seller, its representatives cannot lawfully bind it or accept payments for it. Any obligation entered into by the Seller's representatives shall only be binding on the Seller if the latter's directors or authorized representatives have explicitly accepted that obligation in writing.

Consequently, orders received by means of agents, brokers or representatives shall only be binding upon the Seller once it has issued a written confirmation of order. Receipts for payment may also only be signed by one of the Seller's directors or authorized representatives.

### **6. Supply Conditions**

Supplies are made ex-works from the Seller's warehouses (Incoterms 2000). The parties may, however, mutually agree to a different place of supply. In that case, the goods that are sold shall be transported at the Buyer's risk and expense, including where the Seller arranges for the transportation.

Supplies shall pertain to only those goods designated in the confirmation of order. The Seller shall be entitled to make partial supplies.

### **7. Dispatch**

The goods and their weight are deemed to have been approved and accepted on departure from the Seller's factory or from the original place of origin from which the sold goods are supplied or dispatched. Sold goods are always transported at the Buyer's expense and risk, and the Buyer is accordingly obliged to report any damage, breakage or loss to the Seller's carrier company immediately on receipt of the goods.

### **8. Delivery dates**

The delivery dates are not binding for the Seller and are only provided on an indicative basis, unless they are confirmed by the Seller, in writing, as being binding. The Seller shall take such steps as are necessary to honour any indicated delivery dates.

Late delivery cannot under any circumstances give rise to compensation or any other penalty for delay, nor to a refusal to accept the goods, nor cancellation of the sale, unless there is an explicit written agreement to the contrary. Even when the parties have agreed a special delivery date, all reasons for delay that are not directly dependent upon the Seller's decision shall be deemed to be *force majeure*.

If goods are not supplied, the Seller shall refund any advance payments already made by the Buyer.

If the Buyer has not collected the sold goods at the predicted time of supply, the Seller shall be entitled to regard the Agreement as having been dissolved after the expiry of 15 days, provided that this has been notified to the Buyer, and this without the requirement for any prior notice of default or judicial intervention. The Seller also reserves the right to demand compensation for the loss sustained as a result of failure to collect goods or to do so promptly.

### **9. Transfer and retention of title**

Transfer of ownership of the sold goods only occurs once the Buyer has complied with all of its obligations under the Agreement, specifically the complete payment of the agreed price (including any expenses, interest and compensation for late payment).

Until that point, the Buyer is not entitled to dispose of the goods, render them immovable as a result of their intended use, process them, consume them, mix them with other movable property, pledge them or otherwise deal in them. The Seller shall be entitled to recover the relevant goods as long as the Buyer remains in full or partial default.

Until the transfer of ownership has been finally accomplished, the Buyer undertakes to do all that is necessary to ensure that the sold goods are protected against all forms of partial or complete decay and the Buyer shall also provide the requisite insurance cover.

If the goods are located with a third party, the Buyer shall ensure that the Seller is entitled to recover the goods that had been supplied on the retention of title from that third party.

All claims for compensation available to the Buyer in respect of the goods over which the Buyer has no immediate control and against any third party, irrespective of that the parties identity or capacity, shall be assigned to the Seller, including on disposal by the Buyer or damaged by the parties to the goods in question.

In the event of attachment or seizure of any goods that are still the property of the Seller, the Buyer shall immediately notify the Seller accordingly. The Buyer shall then take all necessary steps to respect the Seller's rights of ownership. For instance, the Buyer shall notify the third party in question, who has imposed attachment that the goods in question are the property of the Seller and shall also lodge the requisite objection with a view to ensuring the fastest possible release of the goods that have been supplied subject to retention of title.

The retention of title does not detract from the fact that all risks of loss, damage or otherwise transfer to the contracting party at the point of finalisation of the Agreement or, if the goods are not individually identified, from the point when they are separated out by the Seller.

### **10. Force Majeure**

In situations of *force majeure* (which includes but is not restricted to accidents, war, strikes, lock-outs, civil uprising, lack of means of transportation, fire at the premises of the Seller or its suppliers, changed economic circumstances, interruptions to production and inventory problems) or other unforeseen circumstances beyond the Seller's reasonable control, the Seller reserves the right, but without being obliged to pay any compensation to the Buyer, to postpone the supply of goods for as long as the *force majeure* situation continues.

### **11. Modalities of performance**

The Seller reserves the right to introduce changes to the goods to be supplied if these are considered necessary by the Seller, whether or not as a result of any changes in production or assembly processes, etc.

### **12. Acceptance, defects**

a. The Buyer undertakes to check the goods immediately upon receipt for conformity with the Agreement. Complaints concerning lack of conformity with the Agreement of the supply and concerning patent defects must, in order to be lawfully valid, be notified by the Buyer to the Seller in writing no more than eight days after the supply of the goods, by letter or email, with the burden of proving transmission being a matter for the Buyer. In the absence of a complaint or reservation within the set time limit, the Buyer shall be deemed to have accepted the goods in full and there shall be no further claim against the Seller for supply of goods that do not conform to the agreement or for patent defects. Any non-conformity of the supply or patent defects must always be noted on the bill of lading (CMR).

If the supply of nonconforming goods is not accepted and if the complaint is notified to the Seller within the time-limit, the components acknowledged by the Seller as being defective shall either be repaired or else replaced free of charge, which shall represent the only compensation, with the Buyer not being then entitled to claim any loss of profit or dissolution of the Agreement.

Goods that conform to the agreement or non-conforming goods that are accepted, or in respect of which a complaint has not reached the Seller within the specified time limits, shall not be repaired or replaced until the Buyer has fulfilled its payment obligation in full.

b. The Seller indemnifies the Buyer in respect of latent defects for a period of six months after the date of supply, in accordance with these general terms & conditions. In order to be able to take advantage of this indemnification, the Buyer must however notify the Seller of the latent defect, by means of registered letter, within seven days after its discovery or within seven days after the Buyer ought to have discovered the latent defect.

The Seller is not liable for the quality or capacity of the sold goods if the defect in quality or capacity is the result of specific, abnormal or incorrect use thereof by the Buyer or any third party. The Buyer alone is liable for the specific use it or any third party makes of the goods it buys. The Seller shall not be deemed to have knowledge of the specific application to which the Buyer will put the goods business is different from their normal use.

The Seller may only be held liable on the basis of latent defects if the defect is objectively established. If a latent defect occurs, the Seller shall at its option either be obliged to repair or replace the defective component of the sold goods or else to repay the corresponding proportion of the invoiced price. The Buyer shall not be able to make a claim for any other payment.

If the sold item is no longer in production at that point or if an amended version is being produced, the Seller shall be entitled to replace the defective component with an equivalent item.

c. After the expiry of the six month time limit specified above, claims shall only be available against the Seller for defects to the sold goods based on and in accordance with the modalities of the guarantee issued by the Seller, as detailed under Part II, Guarantee.

### ***13. Liability***

Apart from the explicit obligations entered into by the Seller pursuant to these general terms & conditions, the Seller's liability shall be limited to such liability as is imposed by peremptory law. Accordingly, all liability for light and serious negligence on the part of the Seller is hereby excluded. However, the Seller may never be held liable for indirect or consequential damage, which includes but is in no sense limited to loss of turnover, increase in general expenses, damage to third parties or to third party property. The Seller's total liability shall in any event be limited to the amount of the invoice (excluding VAT and expenses) in terms of which the item or goods in question, giving rise to the liability, were sold.

### ***14. Price and Payment***

The price indicated in the confirmation of order excludes VAT. The Buyer shall bear the entire financial responsibility for all taxes and levies, of whatever nature, charged on the price or on the goods as well as the costs of supply, collection, assembly, installation or transportation.

If the Seller demonstrates that its own procurement price for the products supplied has risen by at least 10% between the date of the quotation it issued and the date of supply, then the price shall be increased by the same percentage rise, up to a maximum of 80% of the total price.

The quotation may specify that one or more advance payments are due. The Buyer agrees to this by placing the order.

Unless otherwise agreed, all invoices must be paid within 30 days after the date of the invoice, by means of direct transfer into one of the bank accounts indicated on the invoice, referring to the invoice number. The place for payment is the Seller's registered office as stated on the invoice.

Any objection to the terms of the invoice must be submitted by registered letter within five working days after receipt of invoice.

In the event of non-payment or late payment of invoice within the prescribed time limit, interest for delay shall be due by operation of law and without the requirement for notice of default, equivalent to 1% per month (12% on an annual basis), with each month that has started counting as a full month, and payable from the due date of invoice. In appropriate cases, this interest shall be calculated *pro rata temporis*. Furthermore, there shall be affixed compensation due on every invoice not paid on the due date, by operation of law and without the requirement for notice of default, equivalent to 10% of the invoice amount, and subject to a minimum of €200, without prejudice to the Seller's right to prove greater damages and receive higher compensation. The Buyer shall also be liable for any expenses arising from the collection of invoices through the courts.

In the event that any one single invoice is not paid not fully paid within the prescribed time limit, or other outstanding amounts will likewise become immediately due and payable by operation of law. In that case, the Seller shall also be entitled to suspend every new or ongoing Agreement with the Buyer or to terminate such Agreement with immediate effect by sending a registered letter; doing so will not give rise to any right to claim for compensation against the Seller and shall be without prejudice to the Seller's right to compensation, which is assessed at a fixed amount of 30% of the invoice amount, without prejudice to the Seller's right to prove greater damages and receive higher compensation.

If the Buyer fails to fulfil his obligations, the Seller shall be entitled to regard the Agreement as having been dissolved as regards goods that have yet to be supplied, without prejudice to its rights to all compensation and interest payments specified above.

If the Seller's confidence in the Buyer's credit rating is undermined by acts of judicial execution against the Buyer and/or other culpable events that raise question marks about the proper performance of obligations entered into by the Buyer and/or render proper performance impossible, the Seller reserves the right to suspend the supply of the entire order or goods that have yet to be supplied until the Buyer can provide appropriate guarantees. If the Buyer refuses to do so, the Seller reserves the right to regard the Agreement as having been dissolved, all without prejudice to its rights to all compensation and interest payments specified above.

### **15. Divisibility**

If any provision in these general terms & conditions or any part thereof is or becomes null and void, the remaining provisions as well as all other parts of the relevant provisions shall remain in full force and effect and the null and void provision shall be replaced, by agreement between the parties, by a similar provision that coincides as closely as possible

with the initial intent and that leaves the economic balance of the Agreement unchanged as far as possible.

### **16. Complete Agreement**

These general terms & conditions, along with the special conditions, form the entire Agreement and all arrangements between the Seller and the Buyer and they replace all prior contracts and arrangements (whether verbal or written) relating to the subject matter. Any addition to or amendment of these general terms & conditions must be confirmed in writing and accepted by an authorised representative of the Seller.

### **17. Compliance with American export controls and sanction laws**

Both the Seller and the Buyer shall comply with the applicable legislation concerning export controls as well as the sanction laws of the United States of America, which include but are not limited to the export legislation promulgated by the Ministry of Trade, the Bureau of Industry and Security and the various economic sanction programs managed by the Ministry of Finance, more specifically the Bureau for the Control of Foreign Assets.

The Buyer undertakes: (1) not to undertake any activity that might reasonably dissolved in the Seller or any of its representatives, in their capacity as American legal entities, failing to observe American export legislation and/or sanction laws; and (2) not to induce or ask the Seller to undertake any such activity.

### **18. Competent court**

In the event of any disputes, the courts whose area includes the Seller's registered office shall have exclusive jurisdiction.

### **19. Applicable Law**

The Agreement is governed by Belgian law, excluding any referral rules set forth in Belgian law.

## **II. Guarantee**

### **1. Extent of the guarantee**

a. The Seller hereby grants to the Buyer, and in the event of onward sale by the prior to the end user (hereafter collectively referred to as "Buyer"), a two-year guarantee on the goods sold by the Seller, unless otherwise specifically notified by the Seller. The said guarantee period commences on the date of supply of unsold goods, being the date of supply ex-works from the Seller's warehouse (Incoterms 2000).

b. This guarantee covers defects in the materials used, defects in the production or assembly of the sold goods and structural defects. However, the Seller must demonstrate that any such defect or fault is not, directly or indirectly, the result of:

- defective installation, which expression includes:
  - every installation undertaken by an installer that is not recognised by and registered with the Seller:

- every installation performed contrary to the provisions of the Seller's technical manual;
  - every installation undertaken in contravention of the rules of good tradesmanship/sectoral rules;
  - every installation for which the Seller has received its fully completed and signed sealing test form (supplied along with the sold goods and also included in the Seller's technical manual) within seven days after first commissioning, but in any event within the year after the said supply of sold goods;
- the abnormal or incorrect use of the sold goods: "incorrect use" shall be understood to include every use in contravention of the provisions in the Seller's technical manual;
  - a lack of appropriate maintenance and (annual) inspection in accordance with the Seller's instructions;
  - the use of incompatible spare parts or peripheral equipment;
  - subsequent adaptations or changes carried out to the item by the Buyer;
  - external factors.

c. This guarantee also only applies insofar as the Buyer has fully paid for the sold goods in question in accordance with the applicable payment modalities included in Article 14 of Part I of these general terms & conditions.

## **2. Notifications**

In order to be able to take advantage of this guarantee, the Buyer must notify the Seller of the defect, by means of registered letter, within the said guarantee period and within seven days after its discovery or within seven days after the Buyer ought to have discovered the defect. In addition, no legal claim may be raised against the Seller after one year from the discovery of the defect. The defect must also be objectively established by the Buyer and the Seller, failing which the Buyer will no longer have any claim under this guarantee.

## **3. Performance of guarantee obligation**

If a claim can be made under this guarantee, the Seller shall have the option of repairing or replacing the defective component of the sold goods with an identical item or of repaying the corresponding proportion of the invoiced price. If the Seller opts to repair or replace goods, it will have a reasonable period within which to do so. The replaced components will become the Seller's property. The Buyer shall not, however, be entitled to claim any other compensation (including but in no sense limited to compensation for indirect or consequential losses). The Buyer shall be responsible for the costs of collection and re-delivery of the item.

If the sold item is no longer in production or if an amended version is being produced at the point when a claim is made under this guarantee, the Seller shall be entitled to replace the defective component with an equivalent item.

Performance by the Seller of the guarantee obligation during the guarantee period does not in any sense entail any extension of the total length of the guarantee period.

#### **4. *Deviating guarantee exclusively for SOCLA products:***

Without prejudice to the guarantee provisions above, the Seller grants a deviating guarantee for all products carrying the name and/or the logo of the brand SOCLA (hereafter referred to as "SOCLA products").

The Seller grants a five year guarantee for SOCLA products, except for:

- The "Xylia" butterfly valves range and the "Insuflairs" range;
  - These have a two-year guarantee period;
- The disconnectors type BA;
  - These have a one-year guarantee period.

The five-year guarantee also does not apply to:

- parts of SOCLA Products that are subject to normal wear and tear;
- consumables, including but not limited to batteries of actuators, that form part of the SOCLA products

Any liability of the Seller in that respect is excluded.

The said guarantee period commences on the invoicing date. The guarantee only covers defects of materials and manufacturing. Travel, transport, shipment, assembly and disassembly costs are not included in the guarantee. Furthermore, the guarantee, at the Seller's discretion, only consists of repairing or replacing the SOCLA Product concerned. The Buyer will not be entitled a refund, unless agreed otherwise. In case of repair, no new guarantee period starts to run.

In order to be able to take advantage of this guarantee, the Buyer must notify the Seller of the defect in the relevant SOCLA product, by means of registered letter, within the said guarantee period and within seven days after its discovery or within seven days after the Buyer ought to have discovered the defect. In addition, no legal claim may be raised against the Seller after one year from the discovery of the defect. The Buyer has to specify the operating circumstances in which the defect has been noticed.

#### **5. *Other matters***

This guarantee is issued without prejudice to any peremptory statutory provisions.

The Buyer's rights under this guarantee against the Seller may only be transferred with the Seller's prior written agreement.

The provisions in Part I of these general terms & conditions also apply to this Part II.