1. General

(1) All deliveries shall be effected on the basis of the following terms and conditions of business. They shall apply to all contracts concluded by ourselves with our customers, which come into being either through the Internet (Online Shop) under consideration of the special provisions applicable in the present General Terms and Conditions of Business or in any other manner. They shall form the basis for all quotations and agreements and shall be determined to have been acknowledged with placement of an order or acceptance of delivery for the duration of the entire business relationship. Any diverging terms and conditions which have not been acknowledged in writing shall not be binding on ourselves as the Vendor, including where we have not made specific objection to same.

(2) Noncontractual agreements have been concluded outside the present contract.

(3) A “consumer” for the purposes of the following provisions shall be deemed to be a natural person within the meaning of § 13 German Civil Code who enters into a legal transaction for a purpose that is outside his trade, business or profession.

(4) An “entrepreneur” within the meaning of § 14 German Civil Code shall be deemed to be a natural or legal person or a partnership with legal personality who or which, when entering into a legal transaction, acts in exercise of his or its business or profession.

(5) The provisions contained in the terms and conditions of business shall apply in relation to both consumers and entrepreneurs, except as specifically provided writing.

2. Quotation and Conclusion of Contract

(1) The presentation of our goods on the Internet shall not constitute a binding quotation. No obligation according to § 145 German Civil Code shall come into being until the placement of an order by the Customer. In the event of acceptance by ourselves we shall send the Customer a confirmation of order either by e-mail, telex or normal post.

(2) The Customer shall waive any other orders and other forms of presentation of the goods, in particular involving general information relating to prices/goods, our catalogues, our advertising and in letters addressed to customers where and in so far as same have been designated by ourselves as constituting a binding quotation. Where no confirmation of order is issued in text form by ourselves in response to orders not placed via the Internet, the contract shall come into being at the latest with our delivery within the period of time allowed for acceptance.

(3) The nature and scope of delivery shall depend on the content of our written confirmation of order. We shall be entitled to effect partial delivery to an extent that can reasonably be expected to be acceptable. Cost estimates shall only be binding where specifically designated by ourselves as binding. Where work becomes necessary, we reserve the right to exceed the cost estimate by up to 15% of the estimated contractual value without prior notification of the Customer.

(4) Goods ordered via our website shall be delivered in the versions, dimensions, weights, colours and minimum quantities specified in our Online Shop. The information provided in our Online Shop shall constitute no guarantee, of whatever nature. We reserve the right to make changes during the delivery period for the purpose of technical progress or following amendment to statutory provisions where the subject of delivery does not undergo significant modification and such changes can be reasonably expected to be acceptable to the Customer. This shall likewise apply in the case of all other orders to information included on our website, in our catalogues and in our advertising.

(5) We reserve the right to refrain from the confirmation of orders for goods where the ordered goods are not longer available at our company.

3. Prices – Terms of Payment

(1) The prices stated in our Online Shop and for other orders in the confirmation of order (except as specifically stated otherwise therein) shall apply ex works. We reserve the right to effect partial delivery in our discretion. Further terms of delivery, e.g., agreeing to discounts for longer periods of delivery, may be subject to contract.

(2) Any shipment and packaging costs incurred shall depend on the mode of shipment selected by the Customer and shall be stated during online ordering, or in the case of other orders in the confirmation of order. We shall make a separate charge for such costs and shall indicate same separately. Delivery dates and delivery periods shall only have binding effect where confirmed by ourselves in writing.

(3) Prices for spare parts shall only be credited where the replacement item corresponds to the part to be repaired and the original part is capable of being repaired.

(4) The payment term is 30 days net after date of invoice.

(5) If payment by direct debit is agreed, a direct debit notice period of at least 2 days shall be agreed, which shall be fulfilled by notification of collection on the invoice. Where the Customer defaults on payment, we shall be entitled to charge interest on default amounting to 8% p.a. above the base interest rate. Where the Customer is a consumer within the meaning of § 13 German Civil Code, the statutory provisions relating to the right of retention shall apply to consumers. The Customer may only set off our claims where his counterclaim is undisputed or the title is recognised by declaratory judgement; he may only assert a right of retention where this is based on claims under the purchase contract.

4. Delivery

(1) The agreed delivery period shall commence with dispatch of the confirmation of order by ourselves, however not before submission of the documents, permits and approvals to be procured by the Customer and receipt of any agreed down payment.

(2) The delivery period shall be deemed to have been observed where we hand over the consignment to the party responsible for transport or same has left our plant for the purpose of shipment, and where consumer goods are purchased, on an attempt at handover or on an attempt at handover at a time when the Customer should have been able to take over the goods or has failed to collect same on demand.

(3) The agreements for force majeure and all events for which we are not responsible shall discharge us from fulfilment of the contractual obligations we have contracted for the duration of said events. We shall be obliged to immediately notify the Customer in writing where such an event comes about; at the same time we reserve the right in the case of the probable duration of said event.

(4) Where we are prevented due to a circumstance for which responsibility lies with us or our agent from delivering the purchased item by the agreed date or within the agreed period (delay in delivery), we shall assume liability in accordance with the statutory provisions. Where responsibility for the delay in delivery does not lie with ourselves or our agent, we shall only incur liability for the foreseeable losses which typically occur. Where the delay in delivery merely derives from a breach of a contractual obligation of minor significance, the Purchaser may assert a flat-rate claim for delay in performance amounting to 0.5% of the delivery value per week of delay or part thereof, however for not more than 15% of the value of the business relationship.

(5) We shall be entitled to effect partial delivery, whereby same shall constitute an individual transaction.

5. Shipment

(1) The transfer of risk shall take place on shipment of the item to the Purchaser where same is handed over to the party responsible for transport or has left our warehouse for the purpose of shipment. The foregoing provisions shall not apply where the Customer is a consumer within the meaning of § 13 German Civil Code. Where consumer goods are purchased, the risk shall pass to the Customer on handover.

(2) Where no specific instructions are issued by the Customer, we shall determine the mode of shipment at our own discretion. We provide no guarantee in respect of the most inexpensive or safest mode of transport.

(3) With the exception of consumer packagings within the meaning of the packaging regulations we shall not take back transport or other packagings except otherwise agreed.

(4) The Customer shall be obliged to inspect the goods on receipt for identifiable damage resulting from transport and to report any such damage to the forwarding agent on handover and to ask in the same for the existence of said damage. A consolation shall be deemed to have been unconditionally accepted where the consignee or Customer fails to notify us of any claims within the period of time stated below in the course of delivery.

6. Right of Revocation

(1) The Customer shall be entitled, where he places an order via our Online Shop and is a consumer within the meaning of § 13 German Civil Code, to revoke the contract concluded with ourselves within 14 days after receipt of goods without any need to state his grounds for doing so. Such revocation shall be effected in writing, in text form or by return of the goods. Further details about the right of revocation and the consequences of same are included on our website for the Online Shop with the information provided for customers.

(2) Where a purchase order is annulled by the Customer according to para. (6.1.) without justification, we shall be entitled, notwithstanding the possibility of asserting a greater loss, to claim 10% of the purchase price to cover the costs incurred for processing the purchase order and for lost profit. Where we have already manufactured or procured the item according to the Customer's wishes, we shall be entitled to claim a claim for compensation for any damage resulting from failure of time stated below in the course of delivery on the basis of the purchase order, he shall be entitled to effect payment of the full purchase price where there is no justification for annulment. The Customer shall have the right to furnish evidence of a lesser loss.

7. Liability for Material Defects

(1) We guarantee that the ordered goods will be free of any defects according to the latest state-of-the-art technology. The mounting of our goods without instruction sheet has to be carried out by trained personnel only.

(2) The Purchaser's claims to the elimination of defects shall first and foremost be limited to a claim for subsequent performance, i.e., rectification or substitute delivery. It shall be at our discretion whether we effect rectification or substitute delivery. Should rectification or substitute delivery fail, the Purchaser may request a reduction in price or annul the contract. Rectification shall be deemed to have failed where and in so far as a period of time granted to ourselves for subsequent performance expires without result. The prerequisites for exercising the right of annulment shall be determined by § 432 German Civil Code. The foregoing provision shall not apply to consumers. In this regard the statutory provisions shall apply.

(3) The limitation period for material defects shall be one year from delivery of the item in the case of brand-new items. A limitation period of 3 years from delivery shall apply for deliveries of complete hydraulic systems. The sale of used items shall exclude any liability for material defects. The foregoing provisions shall not apply where the Customer is a consumer within the meaning of § 13 German Civil Code. Where consumer goods are purchased, the statutory warranty periods shall apply.

(4) We shall assume liability according to the statutory provisions where the Purchaser asserts claims to compensation which are based on fraudulent intent, wilful intent or gross negligence, including fraudulent intent, wilful intent or gross negligence on the part of our representatives or agents. Where we cannot be
charged with intentional breach of contract, our liability shall be limited to the fore-
seeable losses which typically occur, however not exceeding the amount of cover
protected by our liability insurance. In the event of liability in respect of compensa-
tion shall be excluded; in this regard we shall in par-
cular not assume liability for damage sustained by the delivery item unless this
defects involving life and/or health. Claims arising from defects in accordance to the
German Product Liability Act shall likewise remain unaffected thereby.

(5) In the event of rectification we shall be obliged to bear all expenditure incurred
on receipt of the goods incumbent on the Purchaser according to § 377 German
Commercial Code. We must be immediately notified in writing of any defects,
damage and deviations in quantity as follows; in the event of identifiable defects
within 14 calendar days after delivery at the latest and in the case of other
defects which cannot be detected within this period even with careful inspection,
within 14 days after discovery at the latest. Where notification of defect is not
made in a timely manner, claims against ourselves in respect of such defects
shall no longer be admitted. In the event of damage resulting from transport
the special provision according to item 5.4 shall apply.

(6) Should one of the last-mentioned circumstances occur, the Purchaser shall at
any time limit our obligation to refrain from the collection of said claims
ourselves as long as the Purchaser shall also be authorised to collect these claims
following assignment. Our authori-
ty to collect claims shall only apply where undisputed or recognised by declaratory
judgment.

12. Data Protection – Acquisition of Data

(1) We shall be entitled to process electronic storage and processing of all data
relating to the Purchaser which pertain to the business relationship, for the
purpose of contractual performance under consideration of the provisions of the
German Data Protection Act.

(2) The Customer consents to transmission by the winkler Group to EOS
Information Services GmbH, Gottleib-Daimler-Ring 7. 74906 Bad Rappenau,
Germany, of information relating to failure to comply with the terms of contract
such as default in payment, returned direct debits, summary notices to pay etc.
as well as communication data. Such reports may only be made according to
the German Data Protection Act where this is permissible after weighing up all
interests concerned. EOS Information Services GmbH shall store and trans-
smit data to its contracting parties in Germany. Such data contain information
about the willingness to pay and solvency of companies. The contracting parties
of EOS Information Services GmbH shall include firms from industry, the service
sector and commerce, which offer deliveries and service on credit. EOS Infor-
mation Services GmbH shall only make personal data available where a justified
interest in this respect has been plausibly demonstrated. The Customer may ask
EOS Information Services GmbH to provide information about the data on his
company in writing.

13. Legal Venue – Place of Performance – Choice of Law

(1) The place of performance for all deliveries shall be the registered office of our
company.

(2) Legal venue for Winkler companies in Germany:
Stuttgart (District Court of Bad Cannstatt) shall be the legal venue where the
Purchaser is a merchant within the meaning of the German Commercial Code,
a legal person under public law or a separate asset under public law. In this
case we shall also be entitled to bring an action against the Purchaser before
the court at his place of residence. This shall also apply correspondingly where
the Purchaser has no general legal venue in Germany, transfers his place of residence or customary abode outside Germany after conclusion of the contract
or where his place of residence or customary abode is unknown at the time the
action is brought.

(3) The contract shall be solely governed by the laws of the Federal Republic
of Germany. The applicability of the UN Law on the International Sale of Goods
shall be excluded.

(4) Should individual provisions of the terms of sale be invalid, the validity of the
contract in other respects shall remain unaffected thereby. Invalid provisions shall
be superseded by the statutory provisions.