

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY B2B AND B2C

BWT Austria GmbH

last amended: October 2022



I. GENERAL TERMS

1. Scope

- 1.1. These General Terms and Conditions of Sale and Delivery (the "GTC") apply to all goods and services provided by BWT Austria GmbH, FN 294708w, Walter-Simmer Str. 4, 5310 Mondsee, Austria (hereinafter "BWT", we or us), to business operators and consumers (hereinafter the "Contractual Partner"). These GTC apply even in the absence of an express reference to them.
- 1.2. With regard to consumer transactions within the meaning of Section 1 of the Austrian Consumer Protection Act ("Consumer Transactions"), these GTC apply but with the deviations specified for consumer transactions in Paragraph 15; additionally, Paragraph 16 applies to consumer transactions concluded outside BWT's business premises.
- 1.3. With regard to services provided by BWT, as well as goods and services provided by BWT to the Contractual Partner in the area of swimming pool technology, the Supplementary Provisions for Services and the Supplementary Provisions for Swimming Pool Technology, respectively, shall apply in addition to these GTC.
- 1.4. Terms deviating from these GTC - in particular any general terms and conditions proposed by the Contractual Partner, including terms proposed as part of the acceptance of an offer to enter into business relations - as well as supplements to these GTC become part of the contract only if that has been expressly confirmed in writing by BWT, and only for that specific business case. BWT employees are not authorized to make agreements that deviate from these GTC. If these GTC are considered part of the acceptance of an offer to enter into business dealings, such acceptance is conditioned on the Contractual Partner's agreement to all terms hereof.
- 1.5. These GTC shall also apply if an initial contract was based on them and shall remain in effect and apply equally to any subsequent business relations with the Contractual Partner regardless of whether or not these GTC were expressly integrated or otherwise applied to such further business relations or recurrent performances or orders on call.

2. Offers and conclusion of contract

- 2.1. Offers from BWT are non-binding unless explicitly designated as binding.
- 2.2. Offer documents, including such as drawings, illustrations, weight and other dimensional indications are only approximate, unless BWT explicitly designates them as binding. BWT reserves the right to make changes. This applies in particular to information in any construction zone road traffic plans made available to the Contractual Partner. Calculations performed by BWT and information on water quality or other water properties to be achieved by the object of sale are carried out on the basis of the analysis values provided by BWT. It is agreed that such calculations are provided by BWT for the sole purpose of assessing the needs and objectives of the Contractual Partner and are non-binding. Such indicated values may change in the event of changes in analysis values, delivery quantities and flow rates, etc.
- 2.3. It is the responsibility of the Contractual Partner to timely obtain all permits, in particular operating plant permits, etc., required for the goods and services specified in the offer. If the offer does not correspond to the aforementioned permits' requirements, the Contractual Partner shall immediately notify BWT thereof in writing. BWT is not liable for any harm resulting from a failure to, or delay in, the timely completion of any and all permits or other approvals required for the goods and services specified in the offer. Unless otherwise agreed, BWT has no obligation to undertake such activities or to provide any related verification, information or warnings.
- 2.4. BWT shall not be bound by any terms or other representations that result from obvious typographical errors and mistakes as well as spelling and calculation errors. This applies in particular to errors in the description of the goods and services in the offer.
- 2.5. No contract is concluded until BWT has confirmed the order in writing to the Contractual Partner. The Contractual Partner shall check the content of the order confirmation in particular with regard to the prerequisites in Paragraph 2.3. The Contractual Partner is obliged to immediately give

written notice if there are any discrepancies compared to the notification sent by it. Otherwise the parties shall be deemed to have entered into a binding contract, including these GTC, upon and pursuant to BWT's confirmation of the order.

- 2.6. Information or other representations contained in catalogues, brochures etc. are not binding upon BWT and shall only become an integral part of the contract if BWT makes express reference to them in the order confirmation.

3. Cost estimates

- 3.1. Cost estimates are only binding if submitted by BWT in writing and designated as binding.
- 3.2. Cost estimates are subject to a charge unless explicitly agreed otherwise. BWT does not warrant that any cost estimates are or will be correct. Any such estimates are merely a good faith projection based on information reasonably made available to BWT at the time such estimates were created.
- 3.3. The cost estimates provided by BWT as well as the plans, outlines and drawings on which they are based shall not be made accessible to any third parties without first having obtained the express written consent of BWT. BWT retains all rights to any intellectual property contained in or related to any such materials.
- 3.4. Should it become apparent on site that additional goods and services – not covered by the cost estimate – are required for the proper performance under the contract, BWT may provide such additional goods and services without having received a separate order from the Contractual Partner, provided that the final amount of the initial cost estimate is not exceeded by more than 15%.
- 3.5. If the preparation of the cost estimate requires appraisal or disassembly of an item or inspection of individual parts, the Contractual Partner shall reimburse BWT for any expenses to do so.

4. Prices and terms of payment

- 4.1. All price quotes are non-binding and – unless otherwise agreed – quoted in Euros and exclusive of VAT. All transport and packaging costs, freight and insurance charges, customs duties, fees and levies shall be borne by the Contractual Partner. The statutory value added tax at the applicable rate will be added to the net amount.
- 4.2. All prices are quoted "ex works" (as defined by INCOTERMS 2020) and do not include the costs of transport, assembly or installation.
- 4.3. Subject to any deviating agreement on a credit facility granted by BWT, the following payment terms shall apply: 1/3 of the order total is payable upon receipt of the order confirmation (hereinafter the "Down Payment") and 1/3 of the order total is payable upon notification by BWT of readiness for dispatch, in each case plus VAT, within 8 days of receipt of BWT's order confirmation or BWT's notification of readiness for dispatch, respectively. The remaining 1/3 of the order total plus VAT shall be due for payment within 8 days after receipt of the invoice. If and once the Contractual Partner is in arrears with a partial payment to BWT, the entire outstanding balance shall immediately be due for payment.
- 4.4. Transfers of money are only deemed to have been made once the amount is received in BWT's account or by any third party designated by BWT, respectively. BWT is under no obligation to accept bills of exchange or cheques. In case of an acceptance of bills of exchange or cheques, such acceptance shall be pending full discharge of the debt. All discount charges, collection charges or other costs associated with direct payments shall be borne by the Contractual Partner, and the Contractual Partner shall reimburse BWT for these. Furthermore, there is no obligation on BWT to timely present or protest the bill of exchange.
- 4.5. In the event of a default of payment by the Contractual Partner, BWT is entitled, at its sole discretion, to compensation for its actual losses or interest in arrears at the statutory post-judgment interest rate. For business operators, this rate is 9.2% p.a. above the "base rate," as set by the Austrian National Bank (OeNB). In the event of the Contractual Partner's payment default, BWT is also entitled to annually compounded interest calculated from the day of handover of the goods. In the event of a default of payment, the Contractual Partner shall also replace all dunning charges

and costs of collection incurred by BWT, including all of BWT's attorney's fees and costs. In case of transactions with business operators, this includes a lump sum of EUR 40.00 as compensation for collection costs according to Section 458 of the Commercial Code (UGB). This is without prejudice to BWT's right to assert additional rights and claims. In the event that the Contractual Partner is in default with a (partial) payment, BWT may demand immediate payment of outstanding but not yet due invoice amounts and/or advance payment or the provision of collateral for future deliveries and services.

- 4.6. If the Contractual Partner has several outstanding debts, BWT is entitled to allocate any incoming amounts at its discretion.

5. Deliveries

- 5.1. In the absence of a written agreement to the contrary, deliveries of goods shall be made "ex works" (INCOTERMS 2020) from the registered office of BWT in Walter-Simmer-Str. 4, 5310 Mondsee. The Contractual Partner is obliged to accept deliveries from BWT.
- 5.2. The Contractual Partner or the third party commissioned by it (e.g. carrier) is responsible for arranging the faultless loading and/or fastening of the goods. BWT shall not be liable for either loading or fastening defects.
- 5.3. BWT will comply with delivery target dates and deadlines to the best of its ability. Unless expressly agreed otherwise, all delivery target dates and deadlines are not binding upon BWT. They indicate the expected time of provision and handover to the Contractual Partner. The Contractual Partner can withdraw from the contract on the grounds of a delay in delivery only if it first exhausts a reasonable (in any event no less than 4 weeks) grace period, as long as any such grace period is required according to statutory provisions. BWT must be notified of any such withdrawal by registered letter. The right of withdrawal extends only to the part of the delivery or service that is affected by the delay.
- 5.4. The delivery period shall commence after the receipt of the counter-signed order confirmation or upon receipt of the agreed Down Payment. A further prerequisite for the commencement of the delivery period is that all technical details BWT deems necessary must have been clarified. BWT is entitled to make partial or advance deliveries and to invoice accordingly. This is particularly the case if the Contractual Partner fails to call off the goods and services within a reasonable period of time or if the Contractual Partner has delayed completion of onsite-related preliminary steps such as financing, obtaining of funds, securing of permits, procurement of plans and similar requirements.
- 5.5. The delivery deadline shall be deemed to have been met if the item for delivery has left the BWT plant or, in the case of direct deliveries, if it has left the plant of the supplier at the expiration of the delivery deadline, or if notification has been given that the delivery item is ready for dispatch. Subsequent requests for changes and additions by the Contractual Partner shall have the effect of extending the delivery deadline accordingly. The same applies to the occurrence of unforeseen obstacles outside BWT's and/or any suppliers' control including, without limitation, delayed delivery of key raw materials, other materials or parts or force majeure events such as a strike, lockout, disruptive weather event (or other act of God), pandemic, quarantine restrictions, epidemic, war, riot, fire, flood, earthquake, shortage of energy supplies, or acts of state or governmental action prohibiting BWT from performing its obligations.
- 5.6. The Contractual Partner disclaims any right to assert claims for compensation in cases of delayed performance or non-performance, even after expiration of the grace period, except in case of intentional act or gross negligence.
- 5.7. If a delivery is not possible due to delivery problems and/or price increases at BWT's suppliers or at the producer, BWT is entitled to withdraw from the contract without incurring any liability of any kind to the Contractual Partner.
- 5.8. Goods not accepted by the agreed delivery or performance date shall be stored for a maximum period of 14 days at the Contractual Partner's risk and expense. The warehousing charges shall be borne by the Contractual Partner. At the same time, BWT may insist on fulfilment of the contract or, after a reasonable grace period, withdraw from the contract and commercialize the goods otherwise. In the event of such commercialization, the parties are deemed to have agreed to a penalty of 10% of the merchandise value (excl. VAT). This is without prejudice to BWT's right to demand compensation of non-performance losses exceeding the amount of that penalty.
- 5.9. If the Contractual Partner fails to accept the contractually provided delivery at the contractually agreed location or at the contractually agreed

time, BWT may either demand fulfilment or, upon expiration of a deadline for acceptance, withdraw from the contract, in which case any costs incurred by BWT to date to fulfil its obligations under the contract shall be borne by the Contractual Partner.

6. Prototypes

- 6.1. If the delivery includes goods intended for testing and further development (hereinafter the "**Prototypes**"), the Contractual Partner acknowledges that these Prototypes have not been tested by BWT for the Contractual Partner's intended use. BWT therefore does not warrant the suitability of the provided goods, material and/or tools for the Contractual Partner's intended use and BWT shall not be liable for any alleged breach of warranty.
- 6.2. The Contractual Partner guarantees that the Prototypes will be used exclusively for the expressly agreed purpose. Any use of the Prototypes other than those uses agreed upon are prohibited. Resale of any Prototypes is prohibited.

7. Passage of risk

- 7.1. In case of deliveries without installation or assembly, including the risk of loss or damage to the goods passes to the Contractual Partner as soon as the goods have been provided to the forwarding agent or other shipping provider, or, in the event of default of acceptance on the part of the Contractual Partner, as of notification of readiness for shipment. That also applies if partial deliveries are made, or if BWT has committed to providing other goods or services.
- 7.2. In case of delivery with installation and/or assembly, including the risk of loss or damage to the goods shall pass to the Contractual Partner on the day of transfer to the Contractual Partner's operation or, if trial operation has been agreed upon, following faultless trial operation. Prerequisite therefor is that the trial run or transfer to the Contractual Partner's own operation immediately follows the proper installation and assembly. If the Contractual Partner does not accept the offer of a trial run or transfer to its own operation, including the risk of loss or damage to the goods shall pass to the Contractual Partner after the expiration of 7 days following this offer. In any case, including the risk of loss or damage to the goods shall pass upon the commissioning and/or use of the water treatment plant either by the Contractual Partner, a third party commissioned by the Contractual Partner or by BWT. If the dispatch, the delivery, or the start or execution of the installation or assembly is delayed at the request of the Contractual Partner or for reasons within the Contractual Partner's control, the risk of loss or damage to the goods shall pass to the Contractual Partner. In such cases, corresponding insurance coverage is only to be provided at the written request and expense of the Contractual Partner.

8. Warranty

- 8.1. BWT shall provide the agreed deliveries and services in accordance with the specifications on which the order confirmation is based.
- 8.2. As long as the intended use is unaffected, minor deviations from a sample and/or brochure on which the offer or order confirmation is based (e.g. in terms of dimensions, weight, quality and colour) shall be deemed irrelevant defects acceptable to the Contractual Partner.
- 8.3. The Contractual Partner shall inspect deliveries and services from BWT immediately after acceptance and must immediately notify BWT in writing of any discernible defects, shortfall quantities or incorrect deliveries, but at the latest within one week after acceptance of the deliveries and services. BWT must be notified of any initially hidden defects within one week of their discovery. All complaints must be sufficiently substantiated and supported by evidence.
- 8.4. The warranty period is 6 months from the acceptance of the goods. Following the warranty period of 6 months, any warranty claims are subject to a limitation period of 1 month. The existence of defects must be proven by the Contractual Partner. Section 924 of the Austrian Civil Code (ABGB) shall not apply.
- 8.5. In case of substantiated defects, BWT may, at its sole discretion, repair the defect, supplement what is missing or replace the goods within a reasonable period of time. Multiple repairs, supplementations, and replacements are permissible. Timely repair, supplementation, or replacement shall be deemed an adequate and exclusive remedy, and the Contractual Partner hereby waives any claim for further redress, including cancellation of the contract (redhibition) or price reduction.
- 8.6. The warranty expires if the Contractual Partner or a non-BWT-authorized third party makes changes to or performs repairs on the goods.

- Furthermore, the warranty also expires if the goods are not operated in accordance with all applicable regulations and the operating instructions, or if the permit referred to in Paragraph 2.3 subsequently lapses or otherwise loses validity.
- 8.7. For rendering performance based on warranty, the Contractual Partner must deliver the goods to BWT and collect them from BWT at its own expense and risk.
 - 8.8. BWT is not liable for damages caused by unsuitable or improper use, natural wear and tear, or incorrect or negligent handling or storage.
 - 8.9. Should the offer or order confirmation contain an additional warranty commitment (which in any case applies only as between BWT and the Contractual Partner), the latter does not, under any circumstances, cover wear and tear parts or damage caused by unsuitable or improper use, natural wear and tear, or incorrect or negligent handling or storage. The additional warranty commitment shall be interpreted to mean that BWT is liable for defects (except for the cases listed above) which occur within the agreed warranty period after handover and are asserted within this period.
 - 8.10. NOTWITHSTANDING CLAUSES 8.1 TO 8.9 AND TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, NO OTHER WARRANTIES ARE MADE, EITHER EXPRESSED OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE AND THE CONTRACTUAL PARTNER WIVES ANY AND ALL CLAIMS ARISING THEREFROM.
- 9. Liability of BWT**
- 9.1. To the extent permissible by applicable law, and unless otherwise provided in these GTC, BWT's liability shall be limited exclusively to the recovery of damages caused by BWT through gross negligence or intentional act. In case of gross negligence, BWT's maximum liability is limited to the amounts the Contractual Partner has paid to BWT under the terms of the contract and these GTC, but in no event more than the amount covered by BWT's business liability insurance.
 - 9.2. IN NO EVENT WILL BWT BE LIABLE TO THE CONTRACTUAL PARTNER FOR ANY INCIDENTAL OR INDIRECT DAMAGES, INCLUDING SPECIAL OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS, LOSS OF INTEREST, FAILURE TO MAKE SAVINGS, CONSEQUENTIAL AND PECUNIARY DAMAGE AND DAMAGE ARISING FROM THIRD-PARTY CLAIMS AS WELL AS FOR DAMAGE CAUSED BY UNSUITABLE OR IMPROPER USE, NATURAL WEAR AND TEAR, FAULTY OR NEGLIGENT HANDLING OR STORAGE, WHETHER OR NOT BWT WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.
 - 9.3. The above limitations of liability apply *mutatis mutandis* to BWT's vicarious agents or employees in the performance of their obligations. BWT is liable for oral statements by vicarious agents and BWT-employees, in particular of a technical nature, only if BWT has expressly confirmed them in writing.
 - 9.4. Liability based on the Product Liability Act, as well as product liability claims that may be derived from other provisions, are excluded to the maximum legally permitted extent.
 - 9.5. No claims for damages against BWT, the manufacturer, their vicarious agents and assistants may be brought more than 6 months after such claims have accrued.
 - 9.6. Nothing in this GTC shall operate to limit or exclude either party's liability for any of the following:
 - a) Death or personal injury caused by that Party's gross negligence or that of its employees, agents or subcontractors:
 - b) Fraud or fraudulent misrepresentation:
 - c) Any other matter for which liability may not be limited or excluded according to law.
- 10. Obligations of the Contractual Partner**
- 10.1. The Contractual Partner shall faithfully follow any operating instructions and manuals provided to it, and ensure their observance by others, observe all warnings, and use the purchased good exclusively for its intended purpose.
 - 10.2. In the event of a resale, the commercial reseller must also assign these obligations to the buyer. Furthermore, it is expressly prohibited for a reseller to promise additional properties, applications or the like which exceed the properties BWT assured in writing and which could trigger BWT's liability under the Product Liability Act.
- 11. Retention of title**
- 11.1. The goods delivered by BWT remain the property of BWT until the goods have been paid for in full, taking into account any ancillary costs, and the Contractual Partner has fulfilled its obligations arising from this contract in full (retention of title).
 - 11.2. The Contractual Partner must, on behalf of BWT, carefully keep the goods delivered by BWT safe until title passes to the Contractual Partner. The Contractual Partner bears the entire risk for the retained goods, in particular the risk of destruction, loss or deterioration.
 - 11.3. In the event of a resale of retained goods, the Contractual Partner hereby assigns to BWT, without any further declaration of assignment or notification being required, any claims that may accrue to the Contractual Partner against its customer up to the amount of the value of the delivered goods. Notwithstanding the foregoing the Contractual Partner shall remain authorized to collect such debt. The aforesaid also applies if the delivered goods are processed, combined or mixed with other goods. In that case, BWT acquires co-ownership of the items produced by means of such processing; BWT's ownership share shall reflect the ratio of the delivery value of BWT's goods versus the produced items. If the goods subject to retention of title are processed, combined or mixed in such a way, the Contractual Partner and BWT shall have co-ownership of this item on a pro-rata basis and BWT accepts this transfer and the object shall remain in the possession of the Contractual Partner.
 - 11.4. If the goods delivered by BWT or the items created from them by means of processing should become material components of the real estate of a third party, so that the latter becomes the owner of the goods delivered by BWT by virtue of the inseparable integration with the real estate, the Contractual Partner hereby assigns all claims against the third party, including all ancillary rights, to BWT, in the amount of the value of the goods that were delivered by BWT and subsequently integrated.
 - 11.5. In the event of default, the Contractual Partner shall, at the request of BWT, inform its debtors of the effected assignment, provide the information required to assert the assigned claim and surrender the documents required for this purpose.
 - 11.6. The Contractual Partner shall refrain from pledging or transferring as collateral any BWT goods that are subject to retention of title. In the event of a seizure or other claims by third parties, the Contractual Partner is obliged to assert BWT's property rights, to inform BWT immediately and to take all necessary measures to protect BWT's interests.
 - 11.7. The assertion of a retention of title by BWT does not result in the withdrawal from the contract, unless otherwise agreed.
- 12. Applicable law, place of jurisdiction and arbitration agreement**
- 12.1. Austrian substantive law shall apply to the exclusion of the conflict of laws rules of Austrian private international law and the UN Convention on Contracts for the International Sale of Goods.
 - 12.2. The place of jurisdiction for any and all disputes or claims arising out of or in connection with this contract, including disputes regarding its validity, breach, termination or nullity, shall be the court with subject-matter and local jurisdiction for the registered office of BWT. BWT may, at its sole discretion, initiate arbitration of any dispute in accordance with the Rules of Arbitration (Vienna Rules) of the International Arbitration Institution of the Austrian Federal Economic Chamber (VIAC) by three arbitrators appointed in accordance with these rules. The place of the hearing shall be the registered office of BWT, the language of the proceedings shall be German; the substantive law within the meaning of Paragraph **Error! Reference source not found.** shall apply. Each party consents to the jurisdiction of such a tribunal or to such settlement of the dispute by arbitration as aforesaid and waives any objection thereto.
 - 12.3. THE PARTIES WAIVE ANY RIGHT TO ASSERT ANY CLAIMS AGAINST THE OTHER PARTY AS A REPRESENTATIVE OR MEMBER IN ANY CLASS OR REPRESENTATIVE ACTION, INCLUDING ARBITRATION, EXCEPT WHERE SUCH WAIVER IS PROHIBITED BY LAW OR DEEMED BY A COURT OF LAW TO BE AGAINST PUBLIC POLICY. TO THE EXTENT EITHER PARTY IS PERMITTED BY LAW TO PROCEED WITH A CLASS OR REPRESENTATIVE ACTION AGAINST THE OTHER, THE PARTIES AGREE THAT: (i) THE PREVAILING PARTY SHALL NOT BE ENTITLED TO RECOVER ATTORNEYS' FEES OR COSTS ASSOCIATED WITH PURSUING THE CLASS OR REPRESENTATIVE ACTION (NOT WITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT); AND (ii) THE PARTY WHO INITIATES OR PARTICIPATES AS A MEMBER OF THE CLASS WILL NOT SUBMIT A CLAIM OR OTHERWISE PARTICIPATE IN ANY RECOVERY SECURED THROUGH THE CLASS OR REPRESENTATIVE ACTION.
- 13. Data protection**

13.1. BWT is obliged to comply with the provisions of the Austrian Data Protection Act (DSG), the General Data Protection Regulation (GDPR) and any other statutory confidentiality obligations.

13.2. The Contractual Partner shall ensure that the above obligations are equally binding to its employees and all other persons it is entitled to involve under the contractual agreement.

13.3. BWT processes the personal data necessary for fulfilling the contract. The detailed data protection information pursuant to Art. 13 ff of the GDPR can be found on our homepage at: <https://www.bwt.com/de-at/datenschutz/>.

14. Miscellaneous provisions

14.1. Written form

All agreements, subsequent amendments, supplements, collateral agreements, etc. shall be null and void unless they are made in writing.

14.2. Set-off, retention, and security for warranty claims

The Contractual Partner may not offset BWT's claims against counter-claims of any kind whatsoever, exercise any retention rights without a legally binding title or on the basis of claims from other legal transactions, or retain a security for warranty claims.

14.3. Transfer of rights and obligations

The Contractual Partner shall refrain from passing on, assigning or otherwise transferring rights and obligations arising from the contractual relationship to third parties without the prior written consent of BWT.

14.4. Force majeure

Events of force majeure (such as a strike, lockout, disruptive weather event (or other act of God), pandemic, epidemic, war, riot, fire, flood, earthquake, shortage of energy supplies, or acts of state or governmental action prohibiting BWT from performing its obligations), labour disputes, interruptions of operations outside BWT's reasonable control, problems or delays regarding the procurement of raw materials, labour, fuel, energy, spare parts or machinery; disruptions regarding the provision of goods and services by suppliers or sub-suppliers, riots, quarantine restrictions, and other events that cannot reasonably be prevented shall release BWT from its contractual obligations for the duration of these events. Furthermore, BWT may - without prejudice to other rights of BWT - withdraw from the contract entirely or in part if such an event lasts for more than two months.

14.5. Severability clause

Should any provision of these GTC be or become illegal, invalid, void, or unenforceable, the remaining provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated. In that case, the illegal, invalid, void, or unenforceable provision shall be replaced with such other legal and valid provision the economic effect of which most faithfully reflects that of the replaced provision - as far as possible and to the maximum legally permissible extent.

14.6 Non-Waiver

No delay or failure by either party to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right.

14.7 Merger

These GTC and any related contract between BTW and the Contracting Partner, constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified herein or in the related contract regarding this agreement.

15. Deviating provisions for consumer transactions

15.1. By way of derogation from Paragraph 2.5, in the case of consumer transactions BWT shall send the order confirmation to the Contractual Partner within a reasonable period of time, but no later than 14 days after the order has been placed, otherwise the Contractual Partner is no longer bound by the order or offer. If a consumer orders by telephone, he/she is deemed to make a binding offer to conclude a purchase contract with BWT. In this case, the purchase contract is deemed to be concluded if BWT accepts the consumer's offer by providing the goods to the consumer.

15.2. By way of derogation from Paragraph 4.1, the prices for consumer transactions include VAT.

15.3. By way of derogation from Paragraph 4.3., in the case of consumer transactions, BWT can demand down payments from the contractual partner

in the amount of the value of the work performed and owed according to the contract in the amount of up to 90 percent of the agreed total remuneration (including remuneration for supplementary services, taking into account statutory security services). BWT may choose to invoice partial payments for necessary materials or components which have been delivered or specially manufactured and provided by BWT.

15.4. By way of derogation from Paragraph 4.5, in the case of consumer transactions BWT may choose to charge either the actually incurred loss as compensation, or the statutory interest on arrears.

15.5. By way of derogation from Paragraph 7, in the case of consumer transactions - if BWT sends the goods - the risk of loss or damage to the goods shall not pass to the Contractual Partner until the goods are delivered to the Contractual Partner or to a third party (but not the carrier) appointed by the Contractual Partner. But if the Contractual Partner has concluded the forwarding contract on its own account without taking advantage of a BWT-proposed choice, including the risk of loss or damage to the goods already passes when the goods are handed over to the carrier. However, the transfer of title to the Contractual Partner does not occur at the same time as the passage of the risk of loss or damage to the goods. BWT retains the title in accordance with Paragraph 11 (retention of title) of these GTC as long as the goods have not been paid for in full.

15.6. By way of derogation from Paragraphs 8.3 to 8.10, the statutory warranty provisions shall apply to consumer transactions.

15.7. By way of derogation from Paragraph 14.3., in the case of consumer transactions with a German consumer, informal amendments or supplements to this Agreement shall also be effective if they are individual agreements. For the purpose of these GTC German Consumers shall be consumers according to § 13 of the German Civil Code (BGB) being natural persons who enter into a legal transaction for purposes which are predominantly neither commercial nor self-employed having their habitual residence in the Federal Republic of Germany.

15.8. By way of derogation from Paragraph 14.2, the prohibition to set off debts against claims and the exclusion of the right of retention shall not apply to consumer transactions.

15.9. Notwithstanding Section 12.1, a choice of law shall only apply vis-à-vis a consumer to the extent that it does not restrict any mandatory statutory provisions of the state in which the consumer is domiciled or habitually resident. Consumers having their habitual residence in the EU shall enjoy additional protection in accordance with the mandatory provisions of the law of their country of residence.

15.10. The following Paragraphs do not apply to consumer transactions: Paragraph 1.1 last sentence, Paragraph 1.4, Paragraph 1.5, Paragraph 5, Paragraph 6, Paragraph 9, Paragraph 10.2, Paragraph 12.2, Paragraph 14.4 and Paragraph 14.5. and the applicable statutory provisions shall apply.

16. Right of withdrawal

16.1. The following special provisions of the Austrian Off-Premises and Distance Contracts Act (FAGG) apply exclusively to consumers and only to contracts concluded outside BWT's business premises or by telephone.

16.2. The consumer has the right to withdraw from the contract within fourteen days without needing to state any reason for his/her decision. The withdrawal period begins on the day on which the consumer or a third party (but not the carrier) appointed by the consumer obtains possession of the goods; in the case of a service contract, the period begins on the day on which the contract is concluded. In order to exercise the right of withdrawal, the consumer must notify BWT by means of an unambiguous declaration (e.g. a letter or e-mail sent by post) of the decision to withdraw from this contract. For this purpose, the consumer can use the [model withdrawal form](#) provided on the BWT website, although this is not mandatory. In order to meet with the withdrawal deadline, it is sufficient for the consumer to send off the notification of withdrawal before the expiration of the withdrawal deadline.

The right of withdrawal does not apply to:

- Goods that are sealed at delivery and unsuitable for return for reasons of health protection or hygiene, provided that their seal has been removed after delivery.
- Goods which have been mixed inseparably, due to their nature, with other goods after delivery.
- Goods that are manufactured according to customer specifications or are clearly tailored to personal needs.

16.3. The declaration of withdrawal shall be sent to the following address:

BWT Austria GmbH
Walter-Simmer-Str. 4
5310 Mondsee
Austria
E-mail: office@bwt.at
T.: +43 (0) 6232 5011-0
Company register number: FN 294708w
Commercial register court: Regional Court of Wels

16.4. Consequences of withdrawal:

If the consumer withdraws from this contract, BWT must repay all payments it has received from the consumer, including the delivery costs (with the exception of additional costs incurred as a result of the consumer's choice of a type of delivery other than the cheapest standard delivery offered by BWT), without delay and at the latest within fourteen days from the day on which BWT received the notification of withdrawal from this contract. BWT will use the same means of payment for this repayment as that used by the consumer for the original transaction, unless expressly agreed otherwise between the parties; the consumer will not be charged any fees for this repayment. BWT may refuse repayment until BWT has received back the goods or until the consumer has provided proof that he/she has sent back the goods, whichever is the earlier.

The consumer must send back or hand over the goods to BWT without delay and in any case no later than fourteen days from the day on which the consumer notifies BWT of the withdrawal from this contract. The deadline is met if the consumer sends the goods off before the fourteen-day deadline expires. BWT shall bear the costs of sending back the goods.

The consumer must cover any depreciation of the goods only if such depreciation is due to handling that was unnecessary for testing the quality, characteristics and functioning of the goods.

II. SUPPLEMENTARY PROVISIONS FOR THE SERVICE AND MAINTENANCE

These Supplementary Provisions for the Service Division (the "**Supplementary Provisions / Service**") apply, in addition to the GTC, to all services BWT provides to the Contractual Partner. For consumer transactions within the meaning of Section 1 of the Austrian Consumer Protection Act ("Consumer Transactions"), these Supplementary Provisions for the Service Division shall apply with the deviations set forth in Section 9.

1. Performance and invoicing

1.1. Services shall be invoiced exclusively by individual service unit provided, at the hourly rate specified in the offer (excl. VAT). Services are only invoiced on a flat-rate basis if explicitly indicated in the offer (e.g. for annual maintenance) and only within the described scope for the flat-rate service. Materials, spare parts, consumables etc. will always be charged separately according to the agreed terms. In the case of foreign assignments (outside of Austria), the Contractual Partner shall pay for appropriate accommodation at the place of assignment. The Contractual Partner must ensure that all legal and actual preconditions are satisfied to enable BWT to carry out the foreign assignment. BWT shall be held harmless, and indemnified by the Contractual Partner, with respect to any failure to abide by such legal and actual preconditions.

2. Labour, travel and material costs

2.1. The 'hourly rate', as defined by BWT, covers the regular labour costs involved in the performance of the contract. BWT will invoice travel costs separately and according to expenditure. Travel costs are only included if a maintenance contract or a special agreement has been concluded. Material costs and required exceptional labour costs, if any (e.g. overtime surcharges), will be invoiced separately. Services and spare parts shall be charged at the applicable daily prices when the order is placed.

2.2. If the service can be provided as part of a round trip (BWT determines the time of service, several customers can be visited together), BWT will charge travel costs on a pro-rated travel cost flat rate basis, calculated from the nearest of the following cities: Vienna, St. Pölten, Wr. Neustadt, Graz, Linz, Klagenfurt, Salzburg City, Innsbruck, Landeck, Feldkirch.

Flat rate 090201: City flat rate for the above cities - except Vienna

Flat rate 090202: City flat rate Vienna; as well as interurban up to 30 km

Flat rate 090203: Interurban up to 60 km

Flat rate 090204: Interurban up to 90 km

Flat rate 090205: Interurban up to 120 km

2.3. If a special means of transport (plane, helicopter, ship, etc.) is required for the provision of services, the Contractual Partner shall organise this transfer and pay the costs thereof.

2.4. In the case of contract maintenance services, the flat-rate service charge covers the working time required to service the operational facility (facilities) as well as travel costs. This flat rate does not include any repairs and materials that may be required, which will be charged separately according to expenditure. Contract maintenance work is performed exclusively during the working hours regulated by law or at company level.

2.5. If a specific time has been agreed for the performance of the service, BWT may charge for travel costs and expended time at the respectively applicable rates if the Contractual Partner prevents BWT from performing the work at the agreed time.

2.6. The minimum charging unit for the performance of services is 15 minutes. The service time starts upon the arrival of the BWT service technician and ends with his or her departure. Every quarter of an hour or part thereof shall be charged as a full 15-minute unit. This also applies to travel charges based on expended time.

2.7. A set-up time flat rate will be charged for each force-account contract to cover the pro-rated time spent by the customer service technician for administration and parts procurement in connection with the order.

3. Scope of work and deliveries

3.1. Unless the scope of our work and delivery commitment is defined in a written offer or contract specification, it shall be determined by the requirements prevailing on site.

3.2. BWT may reasonably (as per Ö-Norm A 2060, Paragraph 2.10.6) carry out additional work to the extent found to be necessary in the course of the maintenance work or commissioned repair work.

3.3. If several maintenance sessions are conducted during the contract period, the total annual maintenance will be payable in equal partial amounts per maintenance session, irrespective of the breakdown of the expended time and effort.

4. Calculation and payment

4.1. If fixed service/travel flat rates have been agreed upon, these rates will be invoiced even if the actually expended time and effort for BWT is lower.

4.2. If BWT is partially or completely prevented from carrying out the contractual work during the term of the contract for reasons beyond BWT's control (e.g. through a plant shut-down) and therefore terminates the contract, BWT may charge a cancellation fee corresponding to 50% of the order total.

5. Acceptance of the order / acceptance of the system

5.1. BWT shall be deemed to have accepted the order by virtue of its execution of the commissioned work, no matter how the order was placed with BWT.

5.2. BWT reserves the right to refuse acceptance of any order, with or without reason.

5.3. The Contractual Partner shall be deemed to have accepted and taken over a system/item delivered by BWT or a subsidiary by virtue of commissioning it and training the operator/operating personnel. In any event, however, the system/item is deemed to have been handed over to the Contractual Partner with all legal consequences when it is first used.

5.4. The Contractual Partner shall be deemed to have accepted and acknowledged our services by virtue of the confirmation by the Contractual Partner and the service technician on the customer service order or a respective printed form. In the absence of a prompt confirmation, the service shall be deemed to have been duly performed and accepted upon expiration of 7 working days from execution. The risk, including but not limited to the risk of loss or damage to the goods shall pass to the Contractual Partner upon execution.

6. Warranty and guarantee

6.1. Illuminants of any type, fuses, measuring sensors in contact with the medium, products with expiry dates and consumable parts such as seals, glands, etc. are excluded from the warranty and special guarantee agreements.

6.2. The warranty claim and/or specially agreed guarantee claim, if any, lapse if the maintenance intervals and operational checks recommended by the system supplier or defined in applicable standards are not complied with or verifiably documented.

6.3. The warranty claim and/or specially agreed guarantee claim, if any, lapse if chemicals, process materials or spare parts are used that are not recommended by BWT, or if their use influences the process combination or causes damage.

6.4. Throughout the warranty period (specially agreed guarantee periods), all service and repair work must be carried out exclusively by BWT or a company authorised by us in writing. Failure to do so will render any claim null and void.

6.5. Liability claims, in particular including claims for compensation for direct or indirect damages, third-party damages, consequential damages or lost profit or loss of earnings are excluded to the maximum legally permitted extent.

7. Special conditions for work on third-party facilities

7.1. The Contractual Partner acknowledges that BWT does not warrant the functionality and treatment success of a third-party facility for which it provides maintenance.

7.2. BWT is unable to provide any guarantee for the delivery times of third-party components. BWT accepts no liability whatsoever for any resulting system failures or consequential damages.

7.3. If relevant spare parts are no longer available, BWT is entitled, upon consultation with the Contractual Partner, to also replace larger system parts (e.g. control unit) with equivalent new parts.

8. Intended use and structural execution

8.1. The Contractual Partner shall use BWT products in accordance with the installation and operating instructions and undertakes to install them exclusively in rooms meeting the structural requirements of the installation and operating instructions.

8.2. When the Contractual Partner takes over the system, it shall sign a service report provided by the BWT employee in charge, confirming that all structural requirements have been met by the Contractual Partner and that BWT is not liable for water damages attributable to inadequate structural execution.

8.3. By undersigning the service report, the Contractual Partner or its authorised representative confirms that BWT has fulfilled the warning and information obligations regarding the structural execution of the pump, filter and/or utility room in line with its obligations.

9. Deviating provisions for consumer transactions

9.1. By way of derogation from Paragraph 1.1, the prices for consumer transactions include VAT.

9.2. Paragraph 3.2 does not apply to consumer transactions.

9.3. By way of derogation from Paragraph 4.2., the Contractual Partner shall be entitled to prove that the reasonable amount in the specific case is significantly lower than the lump-sum amount.

9.4. By way of derogation from Paragraph 5.4, sentence 2, the service shall be deemed to have been accepted if the consumer does not expressly refuse acceptance and acknowledgement to BWT within the period of seven days after the request for acceptance and such refusal of acceptance and acknowledgement is expressly stating at least one or more defect(s). Any refusal of acceptance and acknowledgement without reason or without stating any defect, as well as naming of unavoidable or obviously non-existent defects shall be void.

9.5. By way of derogation from Paragraphs 6. and 7.1, the statutory warranty provisions shall apply to consumer transactions.

III. SUPPLEMENTARY PROVISIONS FOR THE SWIMMING POOL TECHNOLOGY AREA

These supplementary provisions for the area of swimming pool technology (hereinafter the "**Supplementary Provisions / Swimming Pool Technology**") apply additionally to the GTC to all services BWT provides to the Contractual Partner in connection with swimming pool technology.

1. Requirements for filling water

- 1.1. Filling and make-up water must comply with the Drinking Water Ordinance and should be taken from the public drinking water supply network. Brine/thermal water is not suitable.
- 1.2. It is pointed out that high concentrations of certain water ingredients (e.g. manganese or iron) can lead to precipitation and deposits on the pool walls or discolouration of the pool water. This is not a defect.

2. Notes on ceramic pools and polyester pools

- 2.1. Concerning pools with plastic built-in parts, the brine concentration shall not exceed 1 % NaCl in the pool water. Metal (built-in) parts must not be used in salt water since this may result in corrosion. The maximum bathing water temperature shall not exceed the following values:
Swimming pools: 30°C; whirlpools: 40°C; sauna pools: 15°C
- 2.2. Dimensional tolerances – up to +/- 2 cm – may occur as a result of the manufacturing process of the elastic plastic body. Consequently, the indicated dimensions are only approximations and must be compensated on site.
- 2.3. The surfaces of polyester pools are made of polyester gelcoats/fine coatings. They are produced with environmentally friendly pigments that do not contain any heavy metals. This can lead to colour changes in some isolated cases.

3. Notes on foil pools

- 3.1. The maximum water temperature shall not exceed 33°C.
- 3.2. Sun protection products with a high protection factor (SPF>30) can cause fading effects on the pool liner.

4. Notes on stainless steel pools

- 4.1. Surface scratches may occur in relation with large-surface processing. This is not a defect.
- 4.2. The weld seams are not subjected to any mechanical processing and pickled on the water side. In the area of the upper pool edge, all water-side weld seams are sanded smooth.

5. Notes on concrete pools

- 5.1. Cavities behind pool coverings (tiles, etc.) inevitably lead to the formation of mould. There is no water treatment to eliminate this.
- 5.2. Dense concrete pool bodies must be sealed on site with an appropriate hydro-insulation.

6. Notes on roller shutter covers

- 6.1. Please note that the PVC-SOLAR and PVC-TRANSPARENT roller shutter slats must never be exposed to direct sunlight in dry condition since this would cause a deformation of the slats.
- 6.2. The roller shutter cover only provides limited accident protection if it is supported at the front and sides by a handrail or support edges attached to the pool wall (skimmer pools). There is no accident protection for pools with overflow channel. Minors, especially small children, must always be supervised.
- 6.3. Outdoor pool: In case of strong wind, the cover must be opened or secured accordingly.
- 6.4. Condensation forms in the profile chambers due to the humid air inside them. Due to temperature differences, the moisture will precipitate as drops. This is not a defect.
- 6.5. Roller shutters/weather skirts require ongoing maintenance, i.e. the stainless steel roller shutter cladding as well as the stainless steel strips of weather skirts must be cleaned regularly as they are highly susceptible to corrosion due to chlorine vapours.
- 6.6. The warranty periods are:
Polycarbonate profiles: 60 months
Electrical parts: 24 months
PVC profiles: 36 months
Wooden components: 24 months
Mechanical parts: 24 months

The warranty does not cover damages caused by unintended or inappropriate use.

- 6.7. Roller shutters in PVC Solar or PVC transparent tend to become opaque ("milky colour") over time. This is not a defect.

In the case of above-ground systems, please note that external parts (shaft, etc.) must be cleaned periodically (at least every 3 months) with clear water and a suitable cleaning agent. Residues (for instance from chlorine or salt) must be removed.

7. Notes on roofs/canopies

- 7.1. Wind: The roof/canopy must always be fastened with safety pins. When closed (not in), the doors must also be closed. Do not leave an open roof/canopy unattended for extended periods of time since the change of the aerodynamic characteristics makes the roof/canopy much more susceptible to wind influences. Please note that the type of construction - light metal frame, large and spring-loaded opening surfaces – makes a swimming pool roof/canopy more susceptible to damage than conventional building constructions. The conclusion of an appropriate insurance is recommended.
- 7.2. Winter: Swimming pool roofs/canopies are not winterproof and must be cleared of snow or defrosted immediately in the event of heavy snowfall. However, heating can be used to keep the roof/canopy free of snow in winter. Please note that automatic defrosting only starts from an interior temperature of +12° C. Otherwise, the roof/canopy must be protected against snow load. The maximum load is 27 kg/m². (Example: 10 cm of wet snow corresponds to approx. 100 kg). If the snow load is higher, the load on the roof/canopy must be relieved. In any event, it is not allowed to step on the roof/canopy. The supplier does not accept any liability if the owner fails to carry out these safety measures and this leads to damage.
- 7.3. Sliding the roof/canopy: The fastening pins must be removed. A removable wall must be unhooked beforehand. The rails must be cleared of leaves, gravel, etc. so that the rollers can move freely. Do not use force if rails or rollers get jammed. For larger spans, push on both sides. Use/activate the roof/canopy only if it is in working order, always observing the above instructions. No liability is accepted for damages resulting from unintended or inappropriate use.
- 7.4. Aluminium and polycarbonate must be cleaned with suitable cleaning agents only.
- 7.5. Governmental notification/approval/permit-related obligations are the responsibility of the Contractual Partner.

8. Information on the design of pump, filter and utility rooms

- 8.1. Customer shall provide floor drains DN 100 or larger, depending on requirements, with backflow protection in utility rooms and shafts to prevent flooding of these rooms. A failure to comply with the aforesaid, i.e. if no suitable automatic drainage system is installed, results in rejection of claims for consequential water damage.
- 8.2. Utility rooms for water treatment and pool surrounds are wet rooms as defined in DIN 18195 (structural waterproofing). Waterproofing and structural measures according to DIN 18195 and the applicable normative references must be implemented.
- 8.3. Upon handover of the system by BWT, the Contractual Partner shall sign a record in the service report, stating that it has fulfilled the technical requirements mentioned in Paragraphs 8.1 and 8.2 when commissioning was performed. By signing the report, the Contractual Partner or its authorised representative confirms that BWT has sufficiently fulfilled the warning and information obligations regarding the execution of the pump, filter and utility rooms.

9. Delivery

- 9.1. The terms of payment and delivery specified in the offer apply exclusively to the territory of Austria and Germany.
- 9.2. The stated delivery period begins a.) after receipt of the order confirmation, duly undersigned by the customer and confirmed by BWT, and b.) after receipt of the Down Payment, if any, on our account and c.) after clarification of all data relevant to process the contract.
- 9.3. Prior to delivery, the Contractual Partner shall ensure that all necessary preparatory work has been completed accordingly. In the event of default on the part of the Contractual Partner, all related costs incurred shall be borne by the Contractual Partner.
- 9.4. If work performance is owed, the delivery deadline/period shall commence with the written order confirmation of BWT, but in any event not

before all execution details have been clarified, both parties have achieved agreement on all conditions of the contract, and the respective construction clearances and, if applicable, governmental approvals/permits are available. Compliance with this deadline is conditional on the timely fulfilment of the Contractual Partner's contractual obligations, including the payment obligation, as well as the timely performance of services by third parties involved in the project. If these prerequisites are not satisfied in time, the delivery deadline/period shall be extended accordingly.

- 9.5. If the delivery deadline/period is delayed at the request of the customer or due to circumstances outside BWT's control, BWT may demand compensation from the customer for the additional expenses, but in any event no less than 1.5% of the order value for each month or part thereof (for interest, storage costs, insurance, additional journeys, additional personnel expenses, idle times).

10. Commissioning

- 10.1. Prior to commissioning, the Contractual Partner shall check that all (BWT) system parts required for commissioning have been installed, checked, cleaned and filled, are ready for water contact and electrically ready for operation. It is necessary to ensure that all system parts required for the function or connected to the BWT systems are in operation and that all operating resources required for start-up are ready.

11. Additional services

- 11.1. All services over and above the subject matter of the contract shall be charged at the applicable cost-plus rates.

12. Deviating provisions for consumer transactions

- 12.1. By way of derogation from the last sentence of Paragraph 6.6, the statutory warranty provisions shall apply to consumer transactions.
- 12.2. By way of derogation from Paragraph 11.1, any services over and above the subject matter of the contract shall be agreed separately.
- 12.3. By way of derogation Paragraph 9.5 shall not apply to a consumer transaction with a German consumer. For the purpose of these GTC German Consumers shall be consumers according to § 13 of the German Civil Code (BGB) being natural persons who enter into a legal transaction for purposes which are predominantly neither commercial nor self-employed having their habitual residence in the Federal Republic of Germany. If a German consumer is in default with the acceptance of the service, BWT has a claim against the Contractual Partner for compensation of the additional expenses, but at least 1.5% of the order value for each month or part thereof (for interest, storage costs, insurance, additional travel, additional personnel expenses, idle times) up to a maximum total of 5% of the order value. The Contractual Partner shall be entitled to prove that in the specific case less additional expenses were incurred than the lump-sum amount.