

Terms and Conditions

Wölfel Engineering GmbH + Co. KG (in the following referred to as Wölfel), with its principal office in Höchberg near Würzburg, provides a wide variety of services and technologically advanced products to their Customers in the fields of vibrations, structural mechanics and acoustics. All contracts with Wölfel shall be subject to the following Terms and Conditions.

If the Special Conditions for services provided by Wölfel as specified in section B. and for contracts with Wölfel regarding products as specified in section C. should differ from the General Conditions set out in section A. or if they include more specific provisions, the Special Conditions shall have priority over the General Conditions.

In case of doubt or differences of interpretation, the German version of these Terms and Conditions shall prevail over the English text.

A. General Conditions for contracts with Wölfel

§ 1 Application

- 1.1 These Terms and Conditions shall apply to the business relations between Wölfel Engineering GmbH + Co. KG (in the following referred to as Wölfel) and its contractual partners (in the following referred to as Customers) in the respective version applicable at the time of contract conclusion. Customers are exclusively entrepreneurs, i.e. natural or legal persons or partnerships with legal capacity who or which, when concluding a legal transaction, act in exercise of their commercial or independent professional activities (§ 14 BGB – German Civil Code).
- 1.2 These Terms and Conditions shall apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the Customer shall not become an integral part of the contract unless Wölfel has explicitly agreed to their application.
- 1.3 Individual agreements with the Customer shall have priority over these Terms and Conditions. Such agreements shall require a written contract or a written confirmation by Wölfel.
- 1.4 If the Customer is an entrepreneur (§ 14 BGB - German Civil Code), the Terms and Conditions in their respective version valid at the time of contract conclusion shall also apply as a framework agreement for future business relations, even if they have not been explicitly agreed again. The currently applicable version of these Terms and Conditions is available on the Wölfel Website at www.woelfel.de/agn.
- 1.5 Unless otherwise specified in these Terms and Conditions or in an individual agreement, the legal provisions shall apply.

§ 2 Scope of supplies and services

- 2.1 The scope of supplies and services to be provided depends on the individual agreement with the Customer or on the written order confirmation by Wölfel, if such an order confirmation should be issued.
- 2.2 Wölfel shall perform the agreed services in accordance with the approved codes of practice and the relevant safety regulations. Wölfel shall notify the Customer without delay of any discrepancies and problems that cannot be easily eliminated. If any action by the Customer should be required and not be taken, Wölfel will also inform the Customer without delay.
- 2.3 If there are any deadlines for the supplies or services to be provided by Wölfel, such deadlines shall be agreed in writing. If the supply by Wölfel requires some kind of contribution by the Customer, the agreed deadlines shall be extended by the period during which the Customer fails to meet these obligations. If agreed deadlines cannot be met due to force majeure, for example legal industrial action, forces of nature, riots, orders by authorities and any other events beyond the control of Wölfel, the deadlines shall be extended by the period during which Wölfel was prevented from providing the supplies or services.

§ 3 Data protection and confidentiality

- 3.1 The Customer shall inform Wölfel about any circumstances that are of particular importance regarding data protection. Wölfel undertakes to comply with the legal provisions on data protection and to ensure that Wölfel employees or authorized representatives adhere to these provisions.
- 3.2 Wölfel undertakes to keep all information provided by the Customer or disclosed during the execution of the contract confidential to third parties, particularly any information regarding business transactions, documents, property rights and specific knowledge.
- 3.3 This obligation shall not apply if the Customer allows Wölfel to distribute this information. At the same time, the obligation of confidentiality shall not apply to any information that was already publicly available at the time of contract conclusion or at the time of disclosure and to any information that Wölfel had already received from another source or that was disclosed through no fault of Wölfel.
- 3.4 Unless otherwise stipulated by the Customer, Wölfel shall use any information obtained from the Customer only for the execution of the contract with the Customer. After completion of the contract and upon request, Wölfel shall return all papers and documents received from the Customer without delay.
- 3.5 The same obligations shall apply to the Customer regarding any information that the Customer has obtained from Wölfel as described above.
- 3.6 This obligation of confidentiality shall expire two years after the end of the contractual relationship between the parties. Furthermore, this obligation of confidentiality shall not apply if one party has a statutory, legal or regulatory obligation to disclose information.
- 3.7 Obligations of confidentiality resulting from a separate non-disclosure agreement between Wölfel and the Customer shall remain unaffected.

§ 4 Rights of use

- 4.1 Unless otherwise specified in an individual contract between Wölfel and the Customer, the Customer shall receive a non-exclusive right of use of the result or product provided by Wölfel; this right of use shall be geographically limited to the territory of the Federal Republic of Germany, without any time restrictions, without the right to pass it on to third parties or the right to sublicense.
- 4.2 If during the execution of the contract Wölfel uses any products or knowledge protected by Wölfel or comparable values that Wölfel is entitled to and if they are required for the utilization of the agreed supplies and services, the Customer can acquire a right of use against payment according to an individual agreement with Wölfel. In case of doubt, this right of use shall not be exclusive.
- 4.3 If Wölfel develops a new invention during the execution of the contract, Wölfel shall be entitled to the rights to this invention, particularly the registration of property rights. In case of doubt, the Customer shall be obligated to maintain confidentiality.
- 4.4 If the Customer contributes to the invention with his own know-how, Wölfel and the Customer shall be considered joint inventors. In this case, each party shall have a non-exclusive right of use. Registration, maintenance and defence of property rights shall be done with the participation of the other contracting party.
- 4.5 If the Customer receives any software from Wölfel, he shall not be entitled to the processing, modification, disassembly, decompiling, reverse engineering or generation in any other form or to the copying of the software, especially the source code of the software, unless the aforementioned utilization is allowed according to §§ 69a-69g UrhG (German Copyright Act) or if it is required for the elimination of a defect by the Customer himself after elimination of the defect by Wölfel has failed. Furthermore, the Customer shall not be entitled to use the software on more than one computer at the same time, to rent the purchased software or to grant sub-licenses to third parties in any other way, to present or make the software available to the public by wire or

wireless means, to provide it to third parties against payment or free of charge, e.g. in the course of Application Service Providing or as Software as a Service. The Customer's right of resale of the program copy, which he acquired in a sale transaction, to a third party, while giving up his own right to use the software, shall remain unaffected. In the event that the software includes open source components, Wölfel shall – in deviation from § 4.1 – only create the prerequisites that the Customer can acquire rights of use from the author/developer of the open source software within the scope of the relevant open source license conditions. In this case, Wölfel does not grant any rights of use to the Customer. The Customer is advised that the distribution – even distribution within the group – of software with open source components triggers the obligation to comply with the license terms of the relevant open source component. This regularly includes the supply of license texts, copyright and modification notes and, if applicable, also the provision of source codes, if this is specified in the license terms of the open source component concerned.

4.6 All rights beyond the agreed scope of use shall remain with Wölfel. In particular, transfer of rights does not include any type of use that is unknown at the time when the respective contract was concluded (§ 31a German Copyright Act).

§ 5 Terms of payment

5.1 Unless otherwise agreed, the agreed fees are exclusive of the applicable value added tax. If no fee was agreed, an ordinary fee for the respective supply or service shall be paid.

5.2 Supplies and services will be invoiced to the Customer by Wölfel. Invoices shall be due 30 days after the date of invoice at the latest, unless a different date of payment is explicitly stated in the invoice. After this date, the Customer shall be in default without any reminder from Wölfel.

5.3 Any objection to an invoice shall be made in writing and submitted to Wölfel within one month after receipt of invoice at the latest. Otherwise, the invoices shall be considered approved.

5.4 The Customer shall obtain the ownership or the rights of use for the supplies and services that are the subject matter of the contract only after full payment of the agreed remuneration. Until that time, Wölfel reserves the right of ownership.

5.5 The Customer can offset claims from Wölfel only against undisputed or legally determined claims. A right of retention can only be asserted due to counterclaims of the Customer arising from a contract with Wölfel.

5.6 In individual cases Wölfel reserves the right to make the provision of contractually agreed services contingent on a credit assessment and, particularly in case of products, on a maximum order quantity. For the purpose of credit assessment, Wölfel shall communicate the company name of the Customer and his address to the association Creditreform Würzburg, Martin-Luther-Straße 2, 97072 Würzburg, as credit agency. If the credit assessment shows that there are negative indications regarding the solvency of the Customer, Wölfel shall be entitled to demand payment in advance or to exercise extraordinary termination of the contract or to withdraw from the contract (extraordinary termination right). If Wölfel exercises the right of extraordinary termination, it shall become free from all contractual liabilities. Wölfel shall be paid for any partial services that have already been rendered. The requirement of advance payment shall already apply if there is well-founded evidence for a payment risk even without a credit assessment.

§ 6 Indemnity

6.1 The Customer shall assume full liability for all potential claims that may be made against Wölfel by third parties due to illegal activities by the Customer, particularly where breach of privacy laws, copyright or competition laws is involved, and the Customer undertakes to bear all costs resulting from such claims or the elimination of the illegal conditions (including the costs of reasonable legal defense). The same shall apply if the Customer provides his own products for the contractually agreed services and if these products are encumbered with any rights of third parties and these third parties assert any claims against Wölfel resulting from possible violation of rights.

6.2 Should the Customer not fulfil his obligations agreed in an individual contract and his obligations to cooperate according to these Terms and Conditions, he shall be liable according to the legal regulations, also for any consequences and disadvantages which he is responsible for.

6.3 Supplementary liability limitations result from the Special Conditions specified in section B. and C.

§ 7 Third party rights

7.1 Wölfel assures that, to the best of their knowledge, no third party rights are infringed by the services or products to be provided according to the contract with the Customer. If Wölfel should find out about any third party claims, they will notify the Customer in writing without delay.

7.2 If any claims should be made by third parties in connection with the respective subject matter of the contract, particularly due to infringement of industrial property rights, the Customer shall notify Wölfel in writing without delay to enable them to assume the defence against such claims. In this case, Wölfel shall have the right, according to their choice, to change, replace or licence the service or product to be provided according to the contract (if the result is equivalent to the service to be provided) or to rescind the contract. However, this shall only apply if the period of limitation had not already passed at the time when Wölfel was notified.

7.3 The aforementioned obligations of Wölfel shall not apply if the Customer is responsible for the infringement in question.

7.4 If any free software (open source software, freeware and public domain) should be used in connection with the contractually agreed supplies and services, Wölfel shall not assume any liability that project services and results in connection with a project as well as the final product are unencumbered by third party rights. Wölfel will provide a list of open source libraries, open source codes used, open source program implementations etc. to enable the Customer to check the services rendered with regard to third party rights and to determine any possible infringement of third party rights. Indemnity by Wölfel in favour of the Customer shall not apply.

§ 8 Miscellaneous

8.1 Contracts concluded with Customers and other contractual regulations including these Conditions shall be governed exclusively by the law of the Federal Republic of Germany. The provisions of the UN Convention on Contracts for the International Sale of Goods shall not apply.

8.2 The place of jurisdiction for all legal disputes arising from or in connection with these Conditions or other contractual agreements with the Customer shall be Würzburg, Germany, provided that the Customer is an entrepreneur according to the German Commercial Code or a corporation under public law or a special fund under public law. However, Wölfel shall also be entitled to take legal action at the general or any other legal place of jurisdiction of the Customer.

8.3 The Customer shall not be entitled to assign, pledge or transfer any claims arising from these Terms and Conditions or from individual agreements with Wölfel or encumber them with any third party rights without prior written permission by Wölfel.

8.4 If any individual provisions of these Terms and Conditions should be invalid, this shall not affect the validity of the remaining provisions.

B. Special Conditions for services provided by Wölfel

§ 1 Completion of contractually agreed services

1.1 Wölfel shall inform the Customer without delay about the completion of the contractually agreed services and – if so agreed – about the results. If a written report should be agreed or required according to the circumstances, Wölfel shall undertake to prepare this report within six weeks after completion of the services, unless otherwise stipulated in an individual agreement.

1.2 The Customer shall be obligated to submit a written notification with a detailed description within two weeks after the information by Wölfel if he finds any deviations from the contractually agreed service or if he

objects to the report. If the Customer fails to submit this notification, the services shall be considered as provided by Wölfel according to contract.

- 1.3 The same shall apply if an acceptance procedure after completion of the contractually agreed service is agreed or required. If the Customer fails to make a statement within the period stated in paragraph 1.2 after Wölfel has offered the completed service to the Customer for acceptance, the service shall be considered as accepted.

§ 2 Termination of contract

- 2.1 Should one of the contracting parties be in default with the service to be provided or with the agreed cooperation and should this party not provide the service or cooperation even after a written reminder by the other party, the party shall be entitled to terminate the contract with two weeks' notice.
- 2.2 This provision shall be without prejudice to the right of extraordinary termination without notice for serious reason.
- 2.3 In case of contract termination, Wölfel shall provide the services or results achieved by that time to the Customer. The Customer shall pay at least the agreed remuneration for the time of service that has passed so far. Further obligations and possible claims for damages shall remain unaffected.

§ 3 Customer cooperation

- 3.1 Where required, the Customer is obligated to cooperate in the provision of services to a reasonable degree and to enable Wölfel to provide the services.
- 3.2 This particularly refers to the Customer's obligation
- to provide all cooperation services, particularly those stipulated in an individual agreement, on time, in a reliable manner and free of charge;
 - to provide Wölfel, at this own expense, with all data and information required to render the services, where necessary;
 - to give, at this own expense and in time, an adequate and comprehensive description of the services he expects from Wölfel;
 - to notify Wölfel without delay of any deviations, changes and problems with a detailed description of the facts;
 - to grant Wölfel access if the services are to be rendered at the Customer's place, and to provide, at this own expense, an appropriate working environment and, if required, skilled personnel for an introduction to local or in-house structures of the Customer;
 - to provide, at this own expense, the necessary material and technical articles as well as access to adequate power supply, where required;
 - to follow the generally accepted safety principles and, where required, to ensure compliance with legal provisions which he has to consider and to ensure that the necessary official permits from the relevant authorities are available.
- 3.3 If the Customer fails to meet any obligation specified in paragraph 3.2, Wölfel shall remind the Customer in writing of his obligation to cooperate and provide a description of the facts. If the Customer continues to fail in his obligation, Wölfel shall be entitled to discontinue their own services. This shall not affect the agreed remuneration.

§ 4 Liability

- 4.1 Regardless of the legal grounds, Wölfel shall be liable for damages caused by violation of an essential contractual obligation for which Wölfel is responsible in a way that endangers the achievement of the purpose of the contract. In this case, liability shall be limited to the foreseeable damage that is typical for this type of contract and which had to be expected by the parties when the contract was concluded because of the circumstances known to the parties at that time. In case of slightly negligent violation of an essential contract obligation, the liability of Wölfel shall be limited to the amount covered by the professional indemnity insurance for a "consulting engineer", this means

3,000,000.00 € for personal damage and 3,000,000.00 € for property damage and financial loss.

- 4.2 The claims for damages shall become time-barred within two years, unless Wölfel has unlimited liability according to these Terms and Conditions or according to the legal regulations.
- 4.3 Wölfel shall only be liable for the loss of data and its recovery if Wölfel is responsible for the loss in accordance with § 4.1 and if this loss has not been avoided through appropriate data protection measures taken by the Customer. If the Customer has not taken such appropriate data protection measures, Wölfel shall not be liable for the loss of data and its recovery.
- 4.4 The aforementioned limitations of liability shall not apply to damages which are due to intent or gross negligence, to damages resulting from injury to life, limb or health and to possible claims based on the product liability law. In these cases, Wölfel shall be liable according to the legal regulations.
- 4.5 The aforementioned limitations of liability shall apply accordingly also in favour of the employees and authorized representatives of Wölfel.

C. Special Conditions for contracts with Wölfel regarding products

§ 1 Transfer of risk

- 1.1 If the product is sent to the Customer, the risk shall be transferred from Wölfel to the Customer when the product is ready for dispatch in the warehouse.
- 1.2 If the Customer has not given any binding instructions regarding shipment after the transfer of risk, Wölfel shall arrange shipment to the agreed place of delivery at the Customer's expense. In this case, Wölfel shall not assume any liability and shall not arrange any transport insurance on their own initiative.
- 1.3 Complaints during transport after the transfer of risk shall be made by the Customer himself against freights forwarders or other persons in charge of transport.

§ 2 Warranty

- 2.1 If the product consists in the development of software, it is pointed out that computer programs and software cannot be developed in such a way that they are error-free for all application conditions. Wölfel guarantees that the software is fully functional according to the description valid at the time of contract conclusion.
- 2.2 Warranty claims of the Customer require that he has properly complied with his legal obligations to inspect the goods and to give notice of defects in accordance with §377 et seqq. HGB (German Commercial Code). If any defect should be found during the inspection or later, Wölfel shall be notified in writing without delay. The notification shall be considered to be made without delay if it is made within two weeks. This deadline is met if the notification is dispatched in due time. Irrespective of the above-mentioned obligations of inspection and notification, the Customer shall make written notification of obvious defects (including wrong and short delivery) within two weeks after delivery. Also in this case, the deadline is met if the notification is dispatched in due time. If the Customer fails to inspect the goods and/or report any defects, Wölfel shall not assume any liability for defects that have not been reported.
- 2.3 Warranty shall not apply to defects

- caused by problems or mistakes, also due to improper handling, at the Customer's place;
- for which Wölfel is not responsible;
- which are due to changes of the product or its components by a third party or due to the installation of components of foreign origin without the prior consent of Wölfel, and if the damage is causally related to such a change.

- which are caused by special external influences that are not provided for in the contract. This includes e.g. storage in unsuitable rooms by the Customer, malfunctions of the Wölfel products caused by Customer devices or systems connected to Wölfel products, as well as malfunctions due to adaptation to a Customer software which was not common or not available at the time when the Wölfel products were delivered.
- 2.4 If Wölfel supplies a defective product and the Customer reports the defect in due form in accordance with his obligation to give notice as stated in the preceding paragraph 2.2, Wölfel shall be entitled to choose the type of supplementary performance. If the chosen supplementary performance should be unacceptable for the Customer, he can refuse it.
- 2.5 In connection with the supplementary performance, Wölfel can show the Customer possible workarounds for the problem. Insofar as it is reasonable for the Customer and does not impair the use of the product, the suggested workaround can be a sufficient type of supplementary performance.
- 2.6 Any expenses resulting from the inspection and supplementary performance, particularly costs of transport, travelling, work and material, shall be borne by Wölfel, if there is actually a defect. If, however, the Customer's request for correction of a defect turns out to be unjustified, Wölfel shall be entitled to claim reimbursement of the costs incurred from the Customer.
- 2.7 Wölfel shall be liable for foreign products only within the scope of the liability for defects of the supplier of the foreign products, unless Wölfel has unlimited liability according to these Terms and Conditions or according to the legal regulations. Wölfel may assign any liability claims against the supplier of the foreign products to the Customer with discharging effect.
- § 3 Program protection**
- 3.1 Wölfel software products and products which include software are normally protected against unauthorized use by technical measures, particularly by dongles, in accordance with § 95a UrhG (German Copyright Act).
- 3.2 The illegal circumvention of the technical protection measure (e.g. also loss or theft of a dongle) shall result in the withdrawal of the granted rights of use of the product and the Customer shall be obligated to pay a lump-sum compensation of 50 % of the original product price to Wölfel. The Customer shall be entitled to prove that no damage at all or less damage than the aforementioned lump sum has been caused to Wölfel.
- 3.3 The Customer can avoid the loss of the granted rights of use by requesting a replacement delivery of the product or the technical protection device against payment of 80 % of the original product price according to the current price list.
- 3.4 The provisions of §§ 69d and 69e UrhG (German Copyright Act) shall remain unaffected.
- § 4 Reservation of title**
- 4.1 If the product has been sold and if no other agreement has been made in an individual contract with the Customer, Wölfel shall retain title to the product until the contractually agreed payment has been made in full by the Customer. In case of a permanent business relation with the Customer, the products shall remain the property of Wölfel until all financial obligations of the Customer resulting from the entire business relation have been fulfilled. Should the Customer be in breach of contract, particularly in the event of default in payment, Wölfel shall be entitled to take back the goods. To the extent permitted by law, taking back the goods shall not constitute a withdrawal from the contract, unless Wölfel has explicitly declared this in writing. After taking back the product, Wölfel shall be entitled to sell it. The proceeds from the sale shall be deducted from the Customer's liabilities, minus reasonable administrative costs.
- 4.2 The products subject to the reservation of title can neither be pledged nor assigned by way of security to third parties until full payment of the secured claims. The Customer shall inform Wölfel in writing without delay if and insofar as there is any access of third parties to the goods belonging to Wölfel.
- 4.3 The Customer shall be obligated to handle the products subject to the reservation of title with due care; in particular, he shall be obligated to insure the goods at their replacement value against damage caused by fire, water and theft at his own expense. If any maintenance and inspection work should be required, the Customer shall carry out such work in time at his own expense.
- § 5 Liability**
- 5.1 Regardless of the legal grounds, Wölfel shall be liable for damages caused by violation of an essential contractual obligation for which Wölfel is responsible in a way that endangers the achievement of the purpose of the contract. In this case, liability shall be limited to the foreseeable damage that is typical for this type of contract and which had to be expected by the parties when the contract was concluded because of the circumstances known to the parties at that time. In case of slightly negligent violation of an essential contract obligation, the liability of Wölfel shall be limited to the amount covered by the business, product and financial loss liability insurance for "information technology companies", this means 3,000,000.00 € for personal damage and 3,000,000.00 € for property damage and financial loss.
- 5.2 Wölfel shall only be liable for the loss of data and its recovery if Wölfel is responsible for the loss in accordance with § 5.1 and if this loss has not been avoided through appropriate data protection measures taken by the Customer. If the Customer has not taken such appropriate data protection measures, Wölfel shall not be liable for the loss of data and its recovery.
- 5.3 The aforementioned limitations of liability shall not apply to damages caused by intent or gross negligence, for damages resulting from injury to life, limb or health, for cases where Wölfel has fraudulently concealed a defect or has given a guarantee for the properties and condition of the product as well as for claims based on the product liability law.
- 5.4 The aforementioned limitations of liability shall apply accordingly also in favour of the employees and authorized representatives of Wölfel.
- § 6 Limitation period**
- 6.1 The limitation period for claims arising from defects in quality and defects in title shall be one year after delivery. If an acceptance procedure has been agreed, the limitation period shall start upon acceptance.
- 6.2 The aforementioned limitation periods shall also apply for contractual and non-contractual claims for damages by the Customer based on a defect of the product, unless application of the regular statutory limitation period (§§ 195, 199 BGB – German Civil Code) would result in a shorter limitation period in individual cases. The limitation periods of the product liability law remain unaffected in any case. Otherwise, claims for damages by the Customer according to the aforementioned § 5 shall only be subject to the statutory limitation periods.
- 6.3 The aforementioned limitation periods shall not apply if Wölfel has unlimited liability according to these Terms and Conditions or according to the legal regulations.