

General Terms and Conditions of Sale, Delivery and Payment

of DWT GmbH (Druckluft-Werkzeug-Technik Gesellschaft mit beschränkter Haftung), with registered office in Germany (hereinafter referred to as "DWT") valid from 1.9.2013

for use against

a legal or natural person who, when concluding the contract, is acting in the exercise of his commercial or independent professional activity (entrepreneur) and legal persons under public law or a special fund under public law (hereinafter referred to as "Client").

1 § Validity

- 1.1. All offers, contracts and deliveries are based exclusively on the following terms and conditions; they shall also apply if no express reference is made to them in individual cases. The terms and conditions shall be deemed accepted at the latest when DWT places an order or accepts the services. It shall be agreed between the Client and DWT upon first conclusion of the contract that these Terms and Conditions shall also apply to all future services and contracts - including those concluded orally or by telephone - within the framework of continuing business relations.
- 1.2. Terms and conditions of the Client or third parties shall not apply, even if DWT does not separately object to their validity in individual cases. Even if DWT refers to a letter which contains or refers to the terms and conditions of the Client or of a third party, this shall not constitute an agreement with the validity of those terms and conditions.

2 § Offers, conclusion of contract, performance data, information, written form

- 2.1. All oral, telephone and written offers by DWT shall be non-binding and subject to change without notice, unless they are expressly marked as binding or contain a specific acceptance period. Orders or offers placed shall only become binding upon written confirmation by DWT.
- 2.2. The Client shall be bound by orders for 4 weeks from receipt by DWT (§§ 147,148 BGB).
- 2.3. The contract shall only be concluded by a written order confirmation or delivery by DWT.
- 2.4. Supplements, modifications or ancillary agreements must be confirmed in writing by DWT to be effective.
- 2.5. Insofar as written form is required in these General Terms and Conditions of Sale, Delivery and Payment, this shall also be deemed to have been complied with if a declaration is made by fax or in electronic form (e-mail).
- 2.6. The written order confirmation by DWT shall be decisive for the scope of delivery.
- 2.7. Information provided by DWT on the subject matter of the delivery or service (e.g. dimensions, weights, utility values, load-bearing capacity, application possibilities, tolerances, specifications as well as other technical data and performance data) as well as the representation thereof (e.g. drawings and illustrations) shall only be approximate unless the applicability for the contractually intended purpose presupposes exact conformity. They are not guaranteed characteristics, but descriptions or markings of the delivery or service. Deviations customary in the trade and deviations which occur due to legal regulations or represent technical improvements, as well as the replacement of components by equivalent parts, are permissible provided that they do not impair the usability for the contractually intended purpose. *In all other cases, only the guarantees expressly granted by DWT in writing shall be authoritative.*
- 2.8. All data and information provided by DWT regarding the suitability and application of its goods shall be given to the best of its knowledge based on DWT's testing and experience. They are not binding unless they are expressly guaranteed in writing.
- 2.9. DWT shall retain title or copyright to all offers and cost estimates submitted by DWT and to all drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and aids made available to the Customer. The Client may not, without the express consent of DWT, make these objects accessible to third parties, disclose them, use or reproduce them itself or through third parties, either as such or in terms of content. At DWT's request, he shall return such items to DWT in their entirety and destroy any copies made if they are not returned by him in the ordinary course of business.

are needed more or if negotiations do not lead to the conclusion of a contract.

3 § Prices and payment

- 3.1. The prices shall apply to the scope of services and deliveries specified in the order confirmations. Additional or special services will be charged separately.
- 3.2. All prices are quoted in EURO ex works unless otherwise agreed.
- 3.3. Payments shall be made free paying agent of DWT or to the bank account specified by DWT.
- 3.4. Unless otherwise agreed in writing between the parties, invoices are payable immediately and must be settled without deduction no later than 14 days after the invoice date. The date of receipt by DWT shall be decisive for the date of payment. Cheques shall not be deemed payment until they have been cashed. In the event of non-compliance with the agreed terms of payment, default interest shall become due without reminder from the 31st day after the invoice date. The assertion of higher interest rates and further damages in the event of default shall remain unaffected.
- 3.5. In the event of non-compliance with the terms of payment, DWT shall be entitled to execute or render outstanding deliveries or services only against advance payment or provision of security if, after conclusion of the contract, it becomes aware of circumstances which are likely to significantly reduce the creditworthiness of the Customer and which jeopardise payment of DWT's outstanding claims by the Customer under the respective contractual relationship (including from other individual orders to which the same framework contract applies).
- 3.6. The Customer shall only be entitled to withhold payments or to offset counterclaims to the extent that his counterclaims are undisputed, acknowledged or have been legally established.

4 § Delivery and delivery time

- 4.1. Unless otherwise agreed, deliveries shall be made ex works.
- 4.2. Periods and dates for deliveries and services promised by DWT shall always be approximate unless a fixed period or date has been expressly promised or agreed. If shipment has been agreed, delivery periods and delivery dates shall refer to the time of handover to the forwarding agent, carrier or other third party commissioned with the transport.
- 4.3. Delivery periods shall commence on the date of the order confirmation, but not before all agreed or otherwise required conditions have been fulfilled by the customer and all details of delivery and execution have been clarified. If these conditions are not fulfilled in a timely manner, the delivery periods shall be extended accordingly and the Buyer shall reimburse DWT for all additional costs and expenses arising from such delay, unless DWT is responsible for such delay.
- 4.4. Agreed delivery periods and dates shall be deemed to have been met if the delivery item has left DWT's warehouse or the manufacturer's works by the end of the delivery period or, in the case of a corresponding transport agreement, readiness for dispatch has been notified to the Customer and the delivery item is made available for collection.
- 4.5. DWT shall be entitled to make partial deliveries if
 - the partial delivery can be used by the customer within the scope of the contractual purpose,
 - the delivery of the remaining ordered goods is ensured and
 - the Client does not incur any substantial additional expenses or costs (unless DWT agrees to assume such costs).

Each partial delivery is considered an independent delivery.

- 4.6. DWT shall not be liable for the impossibility of delivery or for delays in delivery caused by force majeure or other events unforeseeable at the time of conclusion of the contract (e.g. breakdowns of any kind, difficulties in procuring materials or energy, delays in transport, strikes, lawful lockouts, shortages of labour, energy or raw materials, difficulties in obtaining necessary official permits, official measures or failure by suppliers to deliver or to deliver correctly or on time) for which DWT is not responsible. If such events occur to DWT the

If delivery or performance is substantially impeded or rendered impossible and the impediment is not only of a temporary nature, DWT shall be entitled to withdraw from the contract. In the event of hindrances of a temporary nature, the delivery or service periods shall be extended or the delivery or service dates postponed by the period of the hindrance plus a reasonable start-up period.

If the Customer cannot reasonably be expected to accept the delivery or service as a result of the delay, it may withdraw from the contract by immediate written declaration to DWT.

- 4.7. DWT shall immediately inform the Customer of the non-availability of the delivery item or a delay in delivery and, in the event of withdrawal from the contract, shall immediately reimburse or charge the Customer for the corresponding consideration received.
- 4.8. If DWT is in default with a delivery or service or if a delivery or service becomes impossible for DWT for any reason whatsoever, DWT's liability shall be limited to damages in accordance with § 8 of these General Terms and Conditions of Sale, Delivery and Payment.
- 4.9. If the Customer suffers damage due to a delay for which DWT is responsible, in particular if a delivery date has been firmly agreed with DWT, the Customer shall be entitled to claim compensation. In the event of slight negligence, it shall amount to ½ / 100 for each full week of exceeding the deadline, but in total to a maximum of 5 / 100 of the partial or total net order which could not be put into operation in due time due to the delay.
- 4.10. Claims for damages on the part of the Customer which exceed the limits specified in Section 4.9 shall be excluded in all cases of delayed delivery. This shall also apply after the expiry of any period set by DWT for delivery. The Principal shall only be entitled to rescind the contract due to default if no delivery has been made within a reasonable period of time granted to DWT, the compensation for default referred to in Clause 4.9 has been exhausted and DWT does not voluntarily pay liquidated damages in excess of the compensation for default referred to in Clause 4.9 within ten (10) working days of receipt of the Principal's notice of rescission.
- 4.11. If dispatch is delayed as a result of circumstances for which the Client is responsible, the storage costs incurred by third parties and, in the case of storage at DWT ½ / 100, the invoice amount of the items to be stored shall be charged to the Client per week elapsed from the 14th day of notification of readiness for dispatch. We reserve the right to assert and prove further or lower storage costs.
- 4.12. DWT shall be entitled, after granting a grace period which has expired without result, to otherwise dispose of the delivery item and to supply the Customer with a reasonable extension of the delivery period.

5 § Place of performance, dispatch, packaging, passing of risk, acceptance

- 5.1. The place of performance for all obligations arising from the contractual relationship shall be the head office of DWT GmbH, unless otherwise specified.
- 5.2. The mode of shipment and packaging shall be subject to the dutiful discretion of DWT, unless otherwise agreed.
- 5.3. If the delivery item is dispatched at the customer's request, the risk of accidental loss and accidental deterioration shall pass to the customer upon delivery of the delivery item (whereby the start of the loading process shall be decisive) to the forwarding agent, carrier or other third party designated to carry out the dispatch, irrespective of whether the dispatch is effected from the place of performance or who bears the dispatch costs. This shall also apply to the use of DWT's own means of transport.
- 5.4. DWT shall insure the consignment against theft, breakage, transport, fire and water damage or other insurable risks only at the express request of the Client and at the Client's expense.
- 5.5. If the delivery item is ready for dispatch and if dispatch or collection is delayed as a result of circumstances for which the Customer is responsible, the risk shall pass to the Customer from the day on which the delivery item is ready for dispatch and DWT has notified the Customer thereof.
- 5.6. As far as an acceptance has to take place, the object of purchase shall be deemed to have been accepted, if
 - the delivery has been completed,
 - DWT shall notify the Principal thereof with reference to the fiction of acceptance pursuant to this paragraph 6

- and asked him to accept,
- six working days have elapsed since delivery or the Customer has started using the purchased item (e.g. the delivered system has been put into operation) and in this case six working days have elapsed since delivery or installation, and
- the Customer has failed to accept the goods within this period for a reason other than a defect notified to DWT which makes the use of the purchased goods impossible or substantially impairs them.

5.7. The Buyer may refuse to accept deliveries only if the deliveries are obviously and substantially defective and the Buyer notifies DWT thereof in writing within three days after delivery.

6 § Liability for defects

DWT shall be liable to the Customer for material defects, including the absence of expressly warranted characteristics or non-compliance with guarantees, as follows:

- 6.1. The warranty period shall be one year from delivery or, if acceptance is required, from acceptance. The above period shall not apply if the law prescribes longer periods (§ 438 para. 1 no. 2 BGB - Bauwerke und Sachen für Bauwerke / § 479 para. 1 BGB - Rückgriffsanspruch und § 634 a para. 1 BGB - Baumängel). Deviating from sentence 1, the statutory periods shall also apply in the case of claims under the Product Liability Act and in the case of intentional or fraudulent conduct.
- 6.2. In the event of the sale of used goods, no warranty is given. This shall not apply if DWT fraudulently concealed defects or if a certain quality was guaranteed.
- 6.3. Unless expressly agreed otherwise, the time limits in Section 6.1 shall apply to the use of the delivered product in single-shift operation.
- 6.4. The delivered items must be carefully inspected immediately after delivery to the customer or to a third party designated by the customer. They shall be deemed accepted if DWT has not received a written notice of defects with respect to obvious defects or other defects which were identifiable in an immediate, careful inspection within seven working days of delivery of the delivery item or otherwise within seven working days of discovery of the defect or any earlier point in time at which the defect was identifiable to the Client during normal use of the delivery item without closer inspection.
- 6.5. In the event of a justified complaint, the defective product shall, at DWT's option and expense, be deemed to have been
- sent to DWT for repair and subsequent return or
 - the Client holds the defective product ready and DWT's service personnel will be sent to the Client to carry out the repair.

In the event of failure, i.e. impossibility, unreasonableness, refusal or unreasonable delay of the repair or replacement, the customer may withdraw from the contract or reduce the purchase price appropriately.

- 6.6. If the Principal requests that rectification work be carried out at a location determined by it, DWT may comply with such request, whereby replaced parts shall not be invoiced, while working time and travel expenses shall be paid by the Principal at reasonable standard rates.
- 6.7. If a defect is due to the fault of DWT, the Client may claim damages under the conditions specified in § 8.
- 6.8. In the event of defects in components of other manufacturers which DWT is unable to remedy for licensing or actual reasons, DWT shall, at its option, assert its warranty claims against the manufacturers and suppliers for the account of the Client or assign such claims to the Client. Warranty claims against DWT for such defects under the other conditions and in accordance with these General Terms and Conditions shall only exist if the judicial enforcement of the aforementioned claims against the manufacturer and supplier has been unsuccessful or is futile, for example due to insolvency. During the duration of the legal dispute, the statute of limitations of the Customer's respective warranty claims against DWT shall be suspended.
- 6.9. The warranty shall lapse if the Customer changes the delivery item or has it changed by third parties without DWT's consent and if the removal of the defect is thereby impossible or unreasonable.

is made more difficult. In any case, the customer shall bear the additional costs of remedying the defect incurred as a result of the change.

- 6.10. If DWT replaces parts with material defects by way of subsequent improvement, such parts shall become the property of DWT after such replacement.
- 6.11. No guarantee is assumed for damages which have arisen after transfer of risk for the following reasons:
- natural wear and tear or wear and tear exceeding normal consumption;
 - unsuitable, improper use;
 - incorrect, unsuitable or negligent handling;
 - faulty assembly or commissioning by the customer or third parties;
 - in the event of faulty or negligent handling of the delivery item, in particular with regard to these operating instructions;
 - in case of excessive stress;
 - the use of unsuitable equipment, in particular the use of compressed air and replacement materials that have not been prepared in accordance with the operating instructions, which do not include original spare parts or accessories from the manufacturer, if the damage is due to this cause. In such cases, the lack of causality must be proven by the client;
 - external influences, which are not assumed according to the contract.

In addition, claims for defects shall not exist in the event of only insignificant deviations from the agreed quality, insofar as they do not impair the usability for the contractually intended purpose.

Any modifications or repair work carried out improperly by the Client or third parties without DWT's prior approval shall void any liability for the resulting consequences.

- 6.12. DWT shall be given the opportunity to remedy the defect within a reasonable period of time. Only in urgent cases of danger to operational safety, of which DWT shall be notified immediately, or if DWT is in default of remedying the defect, shall the Customer be entitled to remedy the defect itself or have it remedied by third parties and to demand reasonable reimbursement of its costs from DWT.
- 6.13. If the supplementary performance fails, the customer may - without prejudice to the rights under § 8 - withdraw from the contract or reduce the remuneration. The client cannot demand compensation for futile expenses.
- 6.14. Claims against DWT due to defects shall only be due to the Customer and shall not be assignable.

7 § Property rights

- 7.1. DWT warrants that the delivery item is free from industrial property rights or copyrights of third parties. Each contracting party shall immediately notify the other contracting party in writing if claims are asserted against it due to the infringement of such rights.
- 7.2. In the event that the delivery item is subject to an industrial property right or copyright DWT shall, at its option and expense, modify or replace the delivery item in such a way that no rights of third parties are infringed, but the delivery item continues to fulfil the contractually agreed functions, or shall procure the right of use for the Client by concluding a licence agreement. If it fails to do so within a reasonable period of time, the client shall be entitled to withdraw from the contract or to reduce the purchase price accordingly. Any claims for damages of the client are subject to the restrictions of § 8 of these conditions.
- 7.3. In the event of infringements of rights by products supplied by DWT from other manufacturers, DWT shall, at its option, assert its claims against the manufacturers and sub-suppliers for the account of the Client or assign them to the Client. In such cases, claims against DWT shall only exist if the judicial enforcement of the aforementioned claims against the manufacturers and sub-suppliers was unsuccessful or is futile, for example due to insolvency.

8 § Liability for damages due to culpa in contrahendo

- 8.1. DWT's liability for damages, on whatever legal grounds, including but not limited to impossibility of performance, default, defective or incorrect delivery, breach of contract, breach of duties in contract negotiations and tort, shall be limited to the extent that DWT is at fault in each case.

in accordance with the provisions of this § 8.

- 8.2. DWT shall not be liable in the event of simple negligence, unless the breach of material contractual obligations is involved. Essential to the contract are the obligation to deliver the delivery item free of material defects on time and the obligations to provide advice, protection and care, which are intended to enable the customer to use the delivery item in accordance with the contract or to protect the life and limb of the customer's personnel or to protect the customer's property from considerable damage.
- 8.3. To the extent that DWT is liable for damages on the merits pursuant to Clause 8.2, such liability shall be limited to damages which DWT foresaw at the time the contract was concluded as a possible consequence of a breach of contract or which DWT should have foreseen if it had exercised due care. Indirect damages and consequential damages resulting from defects of the delivery item shall only be eligible for compensation if such damages are typically to be expected when the delivery item is used in accordance with its intended purpose.
- 8.4. The foregoing exclusions and limitations of liability shall apply to the same extent to the benefit of DWT's executive bodies, legal representatives, employees and other vicarious agents.
- 8.5. Insofar as DWT provides technical information or acts in an advisory capacity and such information or advice is not part of the contractually agreed scope of services owed by DWT, this shall be done free of charge and to the exclusion of all liability.
- 8.6. The limitations of liability of this § 8 do not apply.
 - in case of gross negligence;
 - in the event of injury to life, limb or health;
 - in the case of culpable violation of essential contractual obligations, insofar as the achievement of the purpose of the contract is endangered, with regard to the foreseeable damage typical of the contract;
 - in cases in which liability is assumed under the Product Liability Act for defects in the delivery item, for personal injury or damage to privately used items;
 - in the absence of properties which are expressly warranted, if the purpose of the warranty was precisely to protect the customer against damage which did not occur to the delivery item itself;
 - in the case of defects which have been fraudulently concealed or the absence of which DWT has guaranteed.

9 § Retention of title

- 9.1. The goods delivered by DWT to the Customer shall remain the property of DWT until all claims against the Customer arising from the business relationship, including future claims arising from contracts not concluded simultaneously or later, have been paid in full. The goods as well as the goods covered by the retention of title which take their place in accordance with this clause are hereinafter referred to as goods subject to retention of title.
- 9.2. The Customer shall store the reserved goods for DWT free of charge.
- 9.3. The customer is obliged to handle the reserved goods with care and to insure them at his own expense against fire, water and theft to the amount of the replacement value of the purchased item. The Principal shall provide DWT with written proof that it has taken out such insurance. DWT shall also be entitled to insure the delivery item at the Customer's expense.
- 9.4. The Customer shall be entitled to process and sell the reserved goods in the ordinary course of business until the event of realisation (Item 9.9) has occurred. Pledges and transfers by way of security are not permitted.
- 9.5. If the reserved goods are processed by the Customer, it shall be agreed that the Customer hereby assigns to DWT as security its future ownership or co-ownership (fractional ownership) of the newly created item in the ratio of the value of the reserved goods to the value of the newly created item. If the reserved goods are combined or inseparably mixed with other items to form a single item and if one of the other items is to be regarded as the main item, DWT shall assign to the Customer, to the extent that the main item belongs to DWT, the pro rata co-ownership of the single item in the proportion stated in sentence 1.
- 9.6. In the event that the reserved goods are resold, the Customer hereby assigns to DWT by way of security the resulting claim against the purchaser - in the event that DWT holds a co-ownership interest in the reserved goods in proportion to the co-ownership interest -. The same shall apply to other claims which take the place of the reserved goods or otherwise arise with regard to the reserved goods, such as e.g.

Insurance claims or claims arising from tort in the event of loss or destruction. DWT revocably authorises the Client to collect the claims assigned to DWT in its own name. DWT may only revoke this direct debit authorisation in the event of realisation.

- 9.7. If third parties have access to the reserved goods, in particular by seizure, confiscation or other dispositions, the Customer shall immediately inform them of DWT's ownership and inform DWT thereof in order to enable DWT to enforce its ownership rights. If the third party is not in a position to reimburse DWT for the judicial or extrajudicial costs incurred in this connection, the client of DWT shall be liable for such costs.
- 9.8. DWT shall release the goods subject to retention of title as well as the items or claims replacing them at its discretion upon request, provided that their value exceeds the amount of the secured claims by more than 50%.
- 9.9. If the Client fails to fulfil an obligation incumbent upon it towards DWT on time or if circumstances arise which make DWT's rights appear endangered - e.g. the Client's financial collapse - DWT shall be entitled to demand the return of the reserved goods without further ado and/or to withdraw from the contract. The client shall then be obliged to surrender the goods. In such cases, the Customer shall be obliged to invoice DWT immediately and unsolicited for the reserved goods and the assigned claims arising therefrom.
- 9.10. If DWT demands the surrender of the reserved goods, DWT shall be entitled, after giving prior notice, to utilise them by selling them to third parties or by purchasing them at the dealer's purchase price, which shall be determined by a publicly appointed expert at the Client's request. In the event of sale to third parties, the proceeds less expenses incurred and a flat-rate distribution fee amounting to 15 / 100 of the proceeds from the sale shall be set off against the liabilities of the customer.

10 § Place of jurisdiction / Place of performance

- 10.1. For both parties and for all present and future claims arising from the terms and conditions of business, the place of performance for payments and the exclusive place of jurisdiction - also for actions in connection with documents and bills of exchange - shall be the head office of DWT or - at its option - the head office of the branch office which concluded the contract.
- 10.2. The relationship between DWT and the Client shall be governed exclusively by the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) shall not apply.
- 10.3. Insofar as the contract or these General Terms and Conditions of Sale, Delivery and Payment contain loopholes, those legally effective provisions shall be deemed to have been agreed for filling these loopholes which the contracting parties would have agreed according to the economic objectives of the contract and the purpose of these General Terms and Conditions of Sale, Delivery and Payment had they been aware of the loophole.