

## **General Terms of Sales and Service of the IWM Group of Companies**

### **§ 1**

#### **Scope of application**

- (1) Our General Terms and Conditions (GTC) apply exclusively and without further formal notice to all future product deliveries and services that we perform for the customer. We do not accept opposing or deviating terms and conditions of the customer, unless we had explicitly agreed in writing to their applicability. This also applies if we perform the delivery unconditionally in awareness of opposing or deviating conditions of the customer.
- (2) Our GTC apply only in relation to entrepreneurs, legal entities under public law or public-law special assets within the meaning of Article 310, Paragraph (1) of BGB (Bürgerliches Gesetzbuch [Civil Code]).

### **§ 2**

#### **Offer and closing of contract**

- (1) Our offers are subject to change, unless they are explicitly designated as "binding". The customer is bound to his order for four weeks. The contract is concluded either by our written acceptance of the offer or confirmation of the order or upon the shipment of goods.
- (2) The customer declares its consent that we will obtain information about his creditworthiness and financial situation. In the case of negative information, we reserve the right to deliver the products only against pre-payment. If financing by third parties is intended, we may request verification of the financing prior to the delivery as well.
- (3) Figures, descriptions, measurement and quantity specifications are only binding if this has been agreed in writing with the customer in advance. The nature of the service to be performed by us is based solely on the written contractual documents. Changes in design and material remain reserved, insofar as these changes are not of fundamental nature and the purpose of the service to be provided to the customer according to the contract is not affected.
- (4) If the customer intends to change the contractually agreed scope of the service to be performed by us, he shall express this change request to us in writing. The costs of the work incurred thereby (e. g. drafting of a change proposal, stand-still

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periods, etc.) shall be borne by the customer as far as we comply with his request for change.

### **§ 3**

#### **Quantity and measurements specifications, obligation to co-operate**

- (1) With the conclusion of this contract, the customer confirms that all quantities and measurements in his orders are based on his own specifications that have been verified by him. If deviations from the customer's specifications arise subsequently, additional costs incurred due to this will be at the customer's expense.
- (2) The customer shall appoint a technically competent contact person who shall provide us with the required information and who can make or announce the necessary decisions for the implementation of the contract order without delay. The customer shall create all the conditions to allow for a proper implementation of the contract order. In particular, the customer shall ensure that all the necessary co-operation on his part or on part of his agents will be fulfilled on time to the required extent and free of charge for us.
- (3) If the implementation of the contract order requires the change or expansion of the customer's software, he shall provide a responsible, qualified employee of his company for implementing the change.
- (4) If the operation of a machine of the customer is required for the implementation of the contract order, the customer shall provide responsible, qualified operating personnel of his company.
- (5) The customer shall made available the customer-specific documents necessary for the implementation and other required internal information of the company to us even without a special request.
- (6) If we perform assembly services with our personnel, the customer has the following deployment obligations to be met on time:
  - provision of skilled technical workers, e.g. brick masons, locksmiths, welders and suitable support staff in numbers we deem necessary or according to the concluded agreements;
  - the assembly and commissioning of the required auxiliary materials (e.g. oxygen, gas), auxiliary devices (e.g. crane, lifting equipment, scaffolds, welding machine), other tools and materials;
  - heating, lighting, water, operating power including the required connections;
  - suitable recreational and work rooms for our assembly staff;

- safe storage facilities for storage of the equipment in the immediate vicinity of the assembly location.

The technical assistance of the customer must assure that the assembly can be started immediately upon arrival of the assembly staff and be implemented without delay by the time of inspection. For example, it is the customer's responsibility to unload the delivered system parts and to perform the transport to the assembly site. If the customer fails to fulfil his duties, we will be entitled, but not obliged to perform the duties obliged by him on his behalf and at his expense. The site of the equipment designated for assembly shall be precisely specified to us.

- (7) The customer is liable for delays or errors in the contract order implementation if these result from cooperation duties he has failed to perform, from wrong service data or incomplete information submitted by him, or any other circumstances he is responsible for.

#### **§ 4**

#### **Prices, conditions of payment**

- (1) Unless agreed otherwise, our prices apply "ex factory". Costs for packaging, customs, unloading, setting up, etc. will be invoiced separately.
- (2) The statutory value added tax is not included in our prices; it will be shown separately in the statutory amount on the invoice on the day of invoicing.
- (3) Unless agreed otherwise, the price to be paid by the customer (without deduction) will become due for payment within 30 days from the invoice date.

- (4) Under purchase or service contracts for machines, the following special payment conditions apply:

30% of the compensation will become due upon the customer's receipt of the order confirmation, the remainder of the price will become due upon delivery of the product. For projects of customer-specific systems and devices, 30% of the price shall be paid upon the customer's receipt of the order confirmation, 60% at the time of readiness for shipment, and the remainder upon acceptance or at the latest 30 days upon delivery (in case no acceptance is conducted).

- (5) Payments by cheque will be considered as payment only when these are irrevocably credited to our bank account; expenses shall be borne by the customer. Bills of exchange are excluded as means of payment.
- (6) All transactions are executed in Euro. If payment in foreign currencies is formally agreed, the exchange rate officially determined on the payment day (receipt of money, bank credit note) without costs will apply for the conversion into the European currency.

## **§ 5**

### **Delivery times, periods, partial deliveries**

- (1) Binding delivery times and scheduled dates require our written confirmation, which may also be issued by fax or email. The periods start upon the customer's receipt of the confirmation and for purchase contracts these are understood as the time of shipment ex factory and for service contracts as the time of completion. The start of the specified period presupposes the clarification of all technical questions, the timely fulfilment of the customer's obligations as well as the availability of the documents and approvals to be provided by him. Any changes to the implementation, which are requested by the customer after the conclusion of the contract, will prolong the delivery times and scheduled dates accordingly. We reserve the plea of the unfulfilled contract.
- (2) Events that are not within our responsibility (in particular strike, acts of god and late supply to us) will prolong the agreed delivery periods and scheduled dates for the duration of the delay in addition to an appropriate start-up period. The customer shall be informed of these circumstances immediately; should the delay persist for longer than three months, the customer will be entitled to withdraw from the contract after setting appropriate grace periods, insofar as it is not yet fulfilled. This right is also granted to us, whereas the setting of a grace period is not required in that case.
- (3) If we are released from our obligation to performance according to the above paragraph, or if the delivery period or the agreed indemnification date extends, the customer will not have any claims to damage compensation.
- (4) Unless otherwise agreed by contract, partial deliveries by us are permissible, as well as deliveries prior to the expiration of the agreed delivery period.
- (5) Call orders agreed with the customer shall be placed by him by calls at the latest within twelve months in absence of other agreements. If this does not take place, we will be entitled to pass on price increases to the customer, which have occurred meanwhile.
- (6) If the customer is in delay with acceptance or if he negligently breaches his other cooperation duties, we will be entitled to demand compensation of the damages resulting in this respect, including any additional expenses. Further claims or rights remain reserved. The risk of accidental loss or accidental deterioration of the products will be transferred to the customer at the time when he starts to be in delay with the acceptance of the products or when he has entered debtor's default.
- (7) We are liable pursuant to the legal regulations, insofar as the underlying contract is a fixed transaction in the definition of Article 286, Paragraph (2) No. 4 of BGB or

Article 376 of HGB (Handelsgesetzbuch [Commercial Code]). We are also liable pursuant to the legal regulations, insofar as the customer is entitled to claim frustration of his interest in the further contract fulfilment as a consequence of a delay of delivery that is in our responsibility.

- (8) We are furthermore liable pursuant to the legal regulations, insofar as the delay of delivery is caused by an intentional or gross negligent breach of contract for which we are responsible; negligence of our representatives or agents shall be attributed to us. If the delay of delivery is caused by a gross negligent breach of contract for which we are responsible, our damage compensation liability is limited to the foreseeable, typically arising damage.
- (9) We will also be liable pursuant to the legal regulations, insofar as the delay of delivery within our responsibility is caused by the negligent breach of an essential contract duty; in that case however the damage compensation liability is limited to the foreseeable, typically arising damage.
- (10) Furthermore, in case of a delay of delivery we are liable for each completed week of delay in the scope of a lump-sum delay compensation amounting to 3% of the delivery value, but no more than 15% of the delivery value.

## **§ 6**

### **Transfer of risk**

- (1) Unless determined otherwise, delivery "ex factory" is agreed. The risk – including the risk of confiscation – will be transferred to the customer in all cases, also if the delivery is free of freight charges, upon the handover of the delivery object to the transport person. This also applies if we carry out the transport ourselves. If the shipping is delayed for reasons within the customer's sphere, the risk will be transferred to the customer already at the time of the notification of the readiness for shipment.
- (2) In absence of opposing agreements, we will determine the kind and manner of the packaging and the shipment. If the customer requests it in writing, we will cover the delivery through a transport insurance at his own expense.
- (3) Under service contracts, the risk will be transferred to the customer upon acceptance.

## **§ 7**

### **Reservation of the title**

- (1) The products will remain our property until all claims in our entitlement from the business relationship with the customer are fulfilled. In case the behaviour of the

customer is responsible for the violation of contract, especially in case of default in payment, we are entitled to take back the products, which shall be considered as a withdrawal from the contract.

- (2) In case of attachments or other interference by third parties, the customer shall immediately notify us thereof in writing, so that we can file third-party proceedings according to Article 771 of ZPO (Zivilprozessordnung [Code of Civil Procedure]).
- (3) The customer may only resell the products subject to the reservation of title in the course of ordinary business and only for as long as he is not in default in relation to us; however at the present time the customer assigns all claims to us in the amount of the final invoice (plus VAT), which arise against his buyers or third parties on basis of the resale, and specifically regardless of whether the products have been resold without or after processing. The customer will remain entitled for the recovery of this claim also after the assignment. Our authorisation to recover this claim directly remains unaffected by it. However, we undertake to refrain from doing so for as long as the customer fulfils its payment obligations from the collected proceeds and does not enter payment default, and for as long as an application for the opening of insolvency proceedings has not been filed and no moratorium on payments is present. If this is the case however, we may demand that the customer discloses the assigned claims and debtors to us, provides all information necessary for collection, surrenders the related documents, and notifies the debtors (third parties) of the assignment.
- (4) The processing or modification of the products by the customer is always done for us. If the products are processed together with other objects that are not our property, we will obtain co-ownership of the new object in the proportion of the product's value (final invoice amount plus VAT), relative to the other processed objects at the time of the processing. Furthermore, the same applies to the object created by processing in the same way as for the products delivered with reservation of the title.
- (5) If the product is inseparably combined with other objects that are not our property, we will obtain co-ownership of the new object in the proportion of the product's value relative to the other combined objects at the time of the combining. If the combining takes place in such a way that the customer's object must be considered the primary object, it is agreed that the customer will transfer co-ownership proportionally to us. The customer will hold the resulting sole ownership or co-ownership for us.
- (6) The customer assigns to secure our claims against him which arise through the combination of the products subject to the reservation of the title as well as claims against a third party.

- (7) We commit ourselves to release the securities due upon demand of the customer insofar as the realizable value of our security exceeds the secured claims by more than 10% whereas the selection of the securities to be released is at our discretion.

## **§ 8**

### **Liability for defects, damage compensation**

- (1) Claims of defects of the customer presuppose that he has properly fulfilled his obligations for inspection and notification of defects, which are in accordance with Article 377 of HGB.
- (2) We do not provide a guarantee for used products, unless we are liable for fraudulent intent or according to the following paragraph. (6). For new objects, the customer is initially limited to make rectification in case a material defect is present, whereas we reserve the choice of supplementary performance. In case the supplementary performance fails, the customer has the right at his discretion to apply reductions or to withdraw from the contract.
- (3) We are entitled to refuse supplementary performance if it involves disproportional costs for us. In that case, the purchaser may demand the reduction of the agreed price or the reversal of the contract instead of the supplementary performance.
- (4) We are liable pursuant to the legal regulations, insofar as the customer raises damage compensation claims which are based on intent or gross negligence by us, our representatives or agents. If no intentional breach of contract is present, the damage compensation liability is limited to the foreseeable, typically arising damage.
- (5) We are liable pursuant to the legal regulations, insofar as we, our representatives or agents commit a negligent breach of an essential contract duty; however, in that case the damage compensation liability is limited to the foreseeable, typically arising damage. Essential contract duties are those resulting from the nature of the respective contract and which endanger the achievement of the contract's purpose if violated.
- (6) The liability for culpable injury to life, body or health remains unaffected; this also applies to the mandatory liability under the Product Liability Act.
- (7) Liability is excluded as far as not agreed otherwise in the paragraph above.
- (8) The limitation period for claims of defects is 12 months calculated from the date of the transfer of risk.

The statutory limitation period in the case of recourse for delivery pursuant to Articles 478 and 479 of BGB and in the cases of Article 438, Paragraph (1) No. 2 and

Article 634 a) Paragraph (1) No. 2 remains unaffected. This also applies in the cases of the above paragraphs (4) to (6).

- (9) Any liability for damage compensation in excess of the provisions in the above paragraphs is excluded – regardless of the legal nature of the asserted claim. This applies in particular to damage compensation claims resulting from negligence upon the conclusion of the contract, due to other breaches of duty or for tortious compensation claims for property damages according to Article 823 of BGB. This limitation also applies insofar as the customer demands the compensation of useless expenses instead of his claim for damage compensation in lieu performance. As far as liability for damages against us is excluded or limited, this shall also apply regarding the personal damage compensation liability of our employees, representatives and agents.

## **§ 9**

### **Software, liability for data loss**

- (1) If we are liable for damage compensation pursuant to the above § 8, our liability for data loss is limited to the typical restoration costs which would have occurred during regular and complete creation of backup copies of the entire data, structures and programs.
- (2) If the use of software products of third parties is included in our scope of service, the customer acknowledges the terms of use/license of the holder of rights to this software already at the present time. These use/license terms will be made available to him upon request. We are not responsible for failures of functions which are related or linked to operating system environments and operating system configurations installed at the customer's site. Our liability is also excluded in case of non-compatibility of the software program with the customer's hardware and/or software, unless we have performed the consulting services in this regard according to written agreement.

## **§ 10**

### **Assignment, offsetting, retention**

- (1) The customer is not entitled to assign or transfer claims against us or rights from the business relationship to third parties without our consent. The same applies to claims and rights arising against us directly by act of law.
- (2) The customer is entitled to rights to offsetting only if his counter-claims have been validly found, are undisputed, or acknowledged by us.



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- (3) The customer is only authorised to exercise a right to retention if his counter-claim is based on the same contractual relationship.

### **§ 11**

#### **Contracting of third parties**

- (1) We are entitled, even without prior consent of the customer, to pass on the contract or parts of it to third parties.
- (2) In these cases, we are liable for the third party as we are for an agent of our own.

### **§ 12**

#### **Place of performance, place of jurisdiction, applicable law**

- (1) Place of performance and place of jurisdiction for disputes with business people, legal entities under public law or public-law special assets is the place of registration of the respective company of the IWM Group of Companies, which concludes the contract. In addition, the relevant company has the right to sue the customer also at the place of its head office.
- (2) The laws of the Federal Republic of Germany apply, the application of the UN Convention on Contracts for the International Sale of Goods is excluded.
- (3) Should one of the above provisions be or become invalid, the validity of the remaining provisions will remain unaffected by it.