

General Terms and Conditions of Sale of DMS Enterprise GmbH

These General Terms and Conditions have been prepared in English only for information purposes. When in doubt about meaning and intention of any provision herein, then the German version shall take precedence over the English version.

§ 1

General provisions

- 1.1 These General Terms and Conditions of Sale shall apply to all business relationships of DMS Enterprise GmbH (hereinafter called "DMS") with their customers (hereinafter called "client"). Contract Language shall be German.
- 1.2 These General Terms and Conditions of Sale shall apply also to any future contracts in terms of delivery and services with the same client in their respective version, without DMS being obliged to indicate the General Terms and Conditions of Sale in each individual case.
- 1.3 Any deviating, conflicting or supplementing general terms and conditions of the client shall only be considered part of the contract, if DMS has confirmed them explicitly in writing.
- 1.4 Any individual arrangements made with the client in the individual case shall be in writing to be effective. Legally binding declarations and notifications to be provided by the client to DMS after concluding the contract (e.g. imposing deadlines, notifications of defect, revocation or price reduction) shall also be given in writing to be effective.
- 1.5 The client shall commit himself, if required, to provide in due time and free of charge any data and materials that may be necessary for the preliminary work. If the provisioning of data or materials as agreed by the client is delayed, then any fixed agreed dates of delivery by DMS shall also be delayed accordingly.

§ 2

2. Offers and conclusion of contract

- 2.1 The contract shall only be considered concluded, if the purchase order has been confirmed by DMS. The written confirmation by DMS shall be the determinative factor for the content of the contract. All offers by DMS shall be nonbinding and noncommittal, unless explicitly marked as binding or containing a fixed term of acceptance. DMS shall be allowed to accept purchase orders or orders within a period of 14 days after receipt.
- 2.2 The contract concluded in writing, including these General Terms and Conditions of Sale, shall be the sole determinative factor defining the legal relationship between DMS and the client. Any verbal commitments made by DMS prior to concluding the contract shall be legally unbinding and verbal agreements of the contracting parties shall be replaced by the written contract, unless the fact arises from them that they continue to apply bindingly. Supplements or changes to the agreements as well as to these General Terms and Conditions of Sale shall be made in writing to be effective. To comply with the obligation

of written documentation, the transmission by telefax shall be considered sufficient. Any other type of transmission by telecommunication, in particular by e-mail, shall be considered insufficient.

- 2.3 Details provided by DMS pertaining to the delivered item or performed work (e.g. weights, measurements, tolerances, technical data, etc.) as well as any depictions of these (e.g. drawings and illustrations) shall be considered only an approximation, unless an exact conformity is required to fulfill the contractually intended purpose. They shall not be considered guaranteed properties of quality, but only a description and characterization of the delivered item or performed work. Any customary variances and variances that result from legal provisions or technical improvements, as well as the replacement of parts by parts of similar value shall be acceptable, unless said variances compromise the usability for the contractually intended purpose.
- 2.4 DMS shall reserve its ownership rights or copyright with respect to all its issued offers and cost estimates as well as any drawings, illustrations, calculations, etc. provided to the client. The client shall not disclose these items to a third party, publish or utilize these items himself or through a third party nor copy these as such nor in content, without prior written consent by DMS. Upon request by DMS, the client shall be obliged to return these items completely to DMS and to destroy any produced copy, if he does not require them himself any longer for a proper business transaction or if negotiations did not result in concluding a contract.

§ 3

Prices and payments

- 3.1 The prices shall apply to the scope of services and the scope of delivery as described in the order confirmation. Any additional or special services shall be charged separately. All prices are stated in Euro (unless explicitly agreed otherwise) ex works, plus packaging, applicable value added tax, customs duty for exports, as well as fees or other public charges.
- 3.2 If the agreed prices are based on DMS list prices, then these shall apply to the entire current business year (e.g. 2012-01-01 until 2012-12-31). Any potential increases in price shall be borne by the client, subject to general increases in price by DMS' manufacturers or suppliers.
- 3.3 All invoicing amounts shall be paid within 15 days without deduction, unless explicitly agreed otherwise in writing. Determinative factor for keeping that due date shall be the date of receipt on the accounts of DMS. Checks and promissory notes shall be considered a payment only after discharge, whereas any resulting additional costs shall be borne by the client. After the passing of the due date, an annual interest rate for default in the amount of eight percentage points above the applicable prime rate shall be charged. Claiming any additional damages due to default shall be reserved.
- 3.4 In principle, the client shall not be entitled to cancel a purchase order. The client shall only be entitled to cancel a purchase order after express consent by DMS in writing. However, any relevant expenditures for cancelation shall be charged to the client.

§ 4

Offsetting and withholding payments

- 4.1 Offsetting with counterclaims of the client or withholding of payments due to such claims shall only be acceptable, if these counterclaims are undisputed or legally established.
- 4.2 DMS shall be entitled to execute outstanding deliveries or services only against advance payment or security payment, if circumstances become known after concluding the contract, that qualify to substantially reduce the client's creditworthiness and through which the payment of any open accounts receivable of DMS by the client resulting from the individual contract relationship (including accounts receivable from different individual purchase orders, to which the same master contract applies) is endangered.

§ 5

Delivery and term of delivery

- 5.1 Any deliveries shall be carried out ex manufacturer's works, ex place of business of the contracting partner of DMS or directly ex place of business of DMS itself.
- 5.2 Any terms or dates of delivery promised by DMS for the delivery of goods or services rendered shall be considered nonbinding, unless a fixed term or a fixed date has been explicitly agreed in writing. If shipment has been agreed, then the term of delivery and dates of delivery shall refer to the time of handover to the transport company, freight forwarder or any other third party charged with the transport.
- 5.3 DMS shall be entitled, without prejudice to the rights resulting from defaulting of the client, to request an extension of the term of delivery and service dates or the postponement of the delivery and service dates by that amount of time, by which the client fails to comply with his contractual obligations towards DMS.
- 5.4 DMS shall not be held liable for the impossibility of delivery or for delivery delays resulting from force majeure or other unforeseeable events at the time of conclusion of the contract (e.g. disruptions of operations of any kind, difficulties in procuring material or energy, delays in transport, strikes, legal lockouts, lack of energy or raw material, difficulties in procuring necessary permissions by government authorities, any actions taken by government authorities, lack of, incorrect or delayed delivery by suppliers) that are beyond the control of DMS. If such events make the delivery or rendering a service more difficult or impossible to DMS and the obstruction is not of a temporary nature, then DMS shall be entitled to cancel the contract. If the obstructions are of a temporary nature, then any terms of delivery or terms of service shall be extended or postponed by the amount of time of the duration of this obstruction plus an adequate restart time. The client shall be entitled to cancel the contact by sending a statement in writing to DMS without delay, if the delay causes the acceptance of the goods to become unreasonable for him.

- 5.5 DMS shall be entitled to partial deliveries, if
- the client is able use the partial delivery within the limits of the designated purpose agreed in the contract,
 - the delivery of the remaining part of the ordered goods is ensured and
 - this partial delivery does not incur any substantial additional work or additional expenditures for the client (unless DMS declares the acceptance of any such expenditures).
- 5.6 In the event of DMS being in default with a delivery or a service or should it become impossible for DMS to deliver the goods or service, then the liability of DMS for indemnification shall be limited by the provisions of § 8 of these General Terms and Conditions of Sale, irrespective of the reason.

§ 6

Passing of risk, shipment, packaging, acceptance

- 6.1 The risk shall pass on to the client latest at the point of handover of the goods to be delivered from the custody of DMS for the purpose of transport. This shall apply also if the client as charged DMS itself with the transport. This shall apply also in the event of partial deliveries or if DMS has agreed to accept other services (e.g. shipment). In the event of the shipment or handover of the goods being delayed due to reasons under control of the client, then the risk shall pass on to the client on that day on which the goods to be delivered are ready for shipment and DMS has notified the client accordingly.
- 6.2 The shipping method and packaging are subject to the dutiful judgment of DMS.
- 6.3 Storage costs after the passing of risk shall be borne by the client. In the event of storage by DMS, the storage costs shall amount to 0.25% of the invoiced amount of the goods to be stored for each elapsed week. The right to claim and to prove any additional or lower storage costs shall be retained.
- 6.4 DMS shall insure the shipment against theft, breakage, transport, fire, and water damages or any other insurable risk only upon express written request by the client and at the expense of the client.
- 6.5 If DMS requires the acceptance of the goods as a prerequisite for payment, then the purchased goods shall be deemed accepted, if
- DMS has notified the client accordingly by indicating the deemed acceptance according to §§ 5, 6 and has requested the client to accept the goods,
 - a period of seven working days has passed since the delivery or the client has started to use the purchased goods (e.g. has put the delivered equipment or goods into operation). In this event six working days have passed since delivery of the goods, and
 - the client has not effected acceptance within this period of time for any reason other than a notification of a defect that will render the use of the purchased goods impossible or substantially compromise them.

- 6.6 A potential return of the purchased goods shall be subject to the consent by DMS in writing.

§ 7

Retention of title

- 7.1 The following agreed retention of title shall serve to secure all existing current and future accounts receivable by DMS against the client, resulting from the existing business relationship between both parties.
- 7.2 The goods delivered to the client by DMS shall remain the property of DMS until full payment of all secured accounts receivable. The goods as well as the goods placed under the retention of title according to this article shall be called goods subject to retention of title.
- 7.3 The client shall be entitled to process, install or sell the goods subject to retention of title in a proper business transaction until an enforcement event (section 7.7) occurs. Pledging or transferring by way of security of the goods shall be prohibited.
- 7.4 If the goods subject to retention of title are processed by the client, then it shall be agreed that the processing shall be on behalf and on the account of DMS as the manufacturer and that DMS shall acquire ownership or – if the material of several owners is processed and the value of the processed product is higher than the value of the goods subject to retention of title – the co-ownership (fractional ownership) of the newly created product in proportion to the value of the goods subject to retention of title compared to the value of the newly created product. In the event of no such acquisition of ownership by DMS occurring, the client shall with immediate effect transfer his future ownership rights or – in the aforementioned proportion – co-ownership rights of the newly created product to DMS by way of security. If the goods subject to retention of title are combined or inseparably mixed with other products to become a uniform product, and if one of the other products is considered the main product, then DMS shall transfer the co-ownership of the uniform product to the client in the proportion as provided in clause 1, if the main product is the property of DMS.
- 7.5 In the event of a resale of the goods subject to the retention of title, the client shall with immediate effect transfer the resulting accounts receivable against the purchasing party – or the co-ownership rights of DMS of the goods subject to the retention of title in proportion to the co-ownership – to DMS by way of security. The same shall apply to any accounts receivable that replace the goods subject to retention of title or result otherwise with respect to the goods subject to retention of title, such as insurance claims or claims resulting from unauthorized acts in the event of loss or destruction. DMS shall revocably authorize the client to collect any accounts receivable transferred to DMS on behalf of himself on the account of DMS. DMS shall only be allowed to revoke this authorization if an enforcement event occurs.
- 7.6 In the event of a third party taking hold of the goods subject to retention of title, especially due to garnishment actions, then the client shall inform this party without delay of the ownership rights of DMS. The client shall also inform DMS of this to allow DMS to enforce

its ownership rights. If the third party is unable to compensate DMS for the resulting judicial and extra-judicial costs, then the client shall be liable to compensate DMS.

- 7.7 If DMS cancels the contract (enforcement event) due to activities of the client violating the terms of contract – in particular defaulting in payment – then DMS shall be entitled to demand the return of the goods subject to retention of title.
- 7.8 If applicable law of the jurisdiction in which the goods subject to retention of title are located does not permit a retention of title, but permits to retain similar rights to the delivered goods, then DMS herewith declares to exercise these rights. The client shall commit himself to cooperate in completing any potentially required formalities.

§ 8

Warranty

- 8.1 DMS shall grant the client a warranty equivalent to the warranties that DMS itself is granted by its contracting partners (e.g. usual manufacturer guaranty or repair guaranty).
- 8.2 The delivered goods shall be inspected thoroughly by the client or, in the event of a delivery to a third party specified by the client, by that third party immediately after delivery. The goods shall be deemed accepted, if DMS does not receive a notification of defect in the way provided in § 2.2, pertaining to any obvious defect or any other defect, that would have been recognized upon an immediate and thorough inspection of the goods, within seven working days after delivery of the goods, or else within seven working days after discovery of a defect or the period in which the defect would have become apparent to the client without closer inspection upon regular use of the delivered goods. The rejected goods shall be returned to DMS carriage paid upon request by DMS. If the notification of defect has been justified, then DMS shall compensate the costs for the most favorable dispatch route; however this shall not apply if the costs are increased due to the delivered goods being at a location other than the location of their designated use.
- 8.3 In the event of a defect of quality of the delivered goods, DMS shall be committed and entitled to the rectification of the defect or replacement of the goods by choice of DMS within a reasonable period of time. If the rectification of the defect or replacement of the goods is unsuccessful, i.e. impossible, unreasonable, refused or unreasonably delayed, then the client may cancel the contract or reasonably reduce the purchasing price.
- 8.4 Should the defect be due to a fault on the side of DMS, then the client may claim indemnification based on the requirements as provided in § 10.
- 8.5 In the event of defects of parts of other manufacturers, which DMS may not rectify due to license rights or other actual reasons, then DMS shall by its own choice exercise its own warranty rights against the manufacturers and suppliers on account of the client or assign the warranty rights to the client. Warranty claims for such defects against DMS shall exist only based on the other requirements and by the provisions of these General Terms and Conditions of Sale, if the legal enforcement of the aforementioned claims against the manufacturer and the supplier have been unsuccessful, or is futile, for instance due to

insolvency. The statute of limitations of the respective warranty claims of the client against DMS shall be suspended for the duration of the lawsuit.

- 8.6 Warranty shall not apply, if the client modifies the delivered goods without authorization by DMS or allows a third party to modify them, thus rendering the rectification of the defect impossible or unreasonably more difficult. In any event, the additional costs of rectification of the defect incurred by these modifications shall be borne by the client.
- 8.7 If the delivery of used goods has been agreed with the client, then these goods shall be delivered under the exclusion of any type of warranty whatsoever.

§ 9

Intellectual property rights

- 9.1 By the provisions of this article, DMS shall vouch for the delivered goods to be free of any third party intellectual property rights or copyrights. Each contracting partner shall notify the other contracting partner without delay in writing of any claims resulting from the infringement of such rights raised against him.
- 9.2 In the event of the delivered goods infringing any third party intellectual property rights or copyrights, DMS shall by its choice and at its own expense modify or replace the delivered goods in such a way, that no third party rights are infringed, with the delivered goods still performing their functions as agreed in the contract, or supply the client with the right of utilization by concluding a license agreement. Should DMS fail to do so within a reasonable period of time, then the client shall be entitled to cancel the contract or to reasonable reduce the purchasing price. Any potential claims for indemnification by the client shall be subject to the limitations of the following article of these General Terms and Conditions of Sale.
- 9.3 In the event of infringed rights of other manufacturers by the products delivered by DMS, DMS shall by its choice lodge a claim against the manufacturers and suppliers on account of the client or assign the claim to the client. Claims against DMS may only be raised as provided by this article, if the legal enforcement of the claims as stated above against the manufacturers and suppliers has been unsuccessful or is futile, for instance due to insolvency.

§ 10

Liability

- 10.1 The liability of DMS for indemnification, irrespective of the legal basis, in particular for the reason of impossibility, default, delivery of defective goods or wrong delivery, breach of contract, breach of duties in contract negotiations and unauthorized actions, subject to factual fault, shall be limited by the provisions of this article.
- 10.2 DMS shall not be held liable in the event of
- a) simple negligence of its executive organs, legal representatives, employees or any other vicarious agents;
 - b) gross negligence of its non-executive employees or other vicarious agents, unless acting in violation of substantial contractual obligations. Substantial contractual obligations shall be the delivery of goods free of defects and in due time, as well as the obligations to give advice, to protect and to provide care, which shall enable the client to use the delivered goods as agreed in the contract or serve to protect the life and limb of the employees of the client or third parties or to protect the property of the clients from substantial damages.
- 10.3 In the event of DMS being liable for indemnification according to the aforementioned reasons, then the liability for indemnification shall be limited to those damages, which DMS has foreseen as a potential consequence of a breach of contract when concluding the contract or those damages, which, taking into account the circumstances that DMS has been aware of or could have been aware of, DMS should have foreseen, if proper care and attention had been applied. Indirect damages and consequential damages that result from defects of the delivered goods shall only be subject to indemnification, if such damages could have been typically anticipated, if the delivered goods had been used as designated.
- 10.4 The aforementioned exclusions and limitations to liability shall apply also for the benefit of the executive organs, legal representatives, employees and other vicarious agents of DMS.
- 10.5 Insofar as DMS provides technical information or gives advice and this information or advice is not owed as part of the scope of services as agreed in the contract, then this information or advice shall be provided free of charge and exclusive of any liability.
- 10.6 The limitations of this article shall not apply to the liability of DMS for acts of intention, guaranteed product characteristics, harm to the life, body or health or as provided by the product liability law.

§ 11

Export

A potentially required export license with regard to the country of destination is available for all goods that DMS delivers under this agreement. Changes regarding the country of destination may be prohibited or may require a respective export license under the applicable export control regulations. The client shall be liable for all changes regarding the country of destination and shall be responsible for obtaining the relevant permissions

and shall hold harmless DMS from all claims resulting from changing the country of destination.

§ 12

Data protection

The client has been informed according to § 33 Clause 1 Bundesdatenschutzgesetz (Federal Data Protection Act) that DMS is storing all data of the client in a machine-readable manner and processes them for the purpose of the contract relationship with the client.

§ 13

Other provisions

- 11.1 Sole place of jurisdiction for all disputes resulting from or in connection with this contract shall be Hamburg, Germany. The laws of the Federal Republic of Germany with the exception of the UN Convention on Contract for the International Sale of Goods and the rules of Conflict of Law of German international civil law shall apply.
- 11.2 Prior to any raising of claims by way of legal action, both parties shall be obliged to participate in an arbitration process before an arbitrator to be named by the Chamber of Commerce of Hamburg, Germany. The costs for engaging such an arbitrator shall be borne by both parties in equal shares half-and-half.
- 11.3 In the event of the contract or these General Terms and Conditions of Sale not covering certain issues, then those legal provisions shall be considered agreed to cover these issues, which the contracting parties would have agreed to based on the economical objectives of the contract and the purpose of these General Terms and Conditions of Sale, if they had been aware of these issues not being covered.