

General Business Terms and Conditions of Woodward SEG GmbH & Co. KG (Version: 01.2002)

1. General

1.1 Our deliveries and other services (assemblies, commissionings, repairs, maintenance, services, consultancy etc.) shall be based exclusively on these business terms; contradictory business or purchasing terms of Client shall only be acknowledged if we expressly agree to their validity in writing. Our terms of business shall apply even if we carry out delivery to Client knowing of contradicting terms of Client or of such deviating from our terms of business.

1.2 We reserve unlimited right of ownership and copyright to illustrations, drawings and other documents (hereinafter "documents"); they may only be made accessible to third parties if we have given our express approval. Documents forming parts of quotations shall be returned to us if no order is placed and return is demanded by us. Sentences 1 and 2 shall be applied to Client's documents accordingly; however, they may be made accessible to third parties to whom we have admissibly transferred deliveries or sundry services.

1.3 We reserve the right to implement part deliveries and part services to a reasonable extent.

1.4 We shall be entitled to make use of other reliable companies in order to fulfil our obligations.

1.5 Following implementation of sundry services, we shall have a claim against Client for initialling of the services rendered by us; the forms necessary for this purpose shall be provided by us.

1.6 Should individual provisions of these terms be ineffective, the validity of the remaining regulations and of the contract itself shall not be affected. This shall not apply if bidding by the contract were to represent an unreasonable hardship for one of the contracting parties.

Mailing Address: Woodward SEG GmbH & Co. KG
Krefelder Weg 47, 47906 Kempen, Germany · P.O. Box 10 07 55, 47884 Kempen, Germany

Managing Directors: Gerhard Lauffer, Jürgen Schmitz
Limited Partnership, Court of Register Krefeld HRA 4757 · Personally Liable Partner: Woodward SEG Verwaltungsgesellschaft mbH
Court of Reg. Krefeld HRB 9009 · VAT no.: DE120004960, Tax no.: 115/5806/0222

Commerzbank AG Dessau (IBAN DE72810400000505073700) SWIFT BIC COBADEFF810
(Sort Code 810 400 00) Acct. no. 5 050 737
Sparkasse Krefeld (IBAN DE6432050000000107730) SWIFT BIC SPKRDE33
(Sort Code 320 500 00) Acct. no. 107 730
Postbank Köln (Sort Code 370 100 50) Acct. no. 129 736 500

For our supplies and services our »General Business Terms and Conditions« shall have exclusive validity.

2. Content of the contract / conclusion of the contract

2.1 Pre-contractual notifications such as quotations, estimates and descriptions produced by us shall be without obligation provided no different written agreement has been made.

2.2 Information in catalogues and brochures, pamphlets, information on application technique and other information shall not be part of the contract provided nothing else has been agreed in writing.

2.3 Orders shall only be binding for us if we have confirmed them in writing. If an order received from Client is not confirmed in writing or implemented by us within 2 weeks of receipt, Orderer shall be entitled to withdraw the order.

3. Prices / payment terms

3.1 To the extent that nothing else can be seen from our order confirmation, our sales prices shall apply ex works or warehouse, exclusive of packaging. The same shall apply accordingly for sundry services.

3.2 The pricing of sundry services shall be according to an agreed fixed price, or, if there is no such agreement, according to time and actual expenditure according to our service rates applicable at the time of the implementation of the service plus subsidiary costs (travelling expenses, spare parts etc.). Client shall be entitled to withdraw from the contract if a price increase 10% above the prices/service rates used as a basis at conclusion of the contract results from the application of the prices of the current service rates in question.

3.3 The services rendered in order to make an estimate can be charged to Client if this has been agreed in the individual case.

3.4 The payment terms agreed in each case shall apply for all payments. If no special agreement has been made, all invoices shall be due for payment immediately and payable within 14 days of date of invoice purely net cash.

3.5 The right to part payments shall accrue to us for part services.

3.6 Statutory Value Added Tax shall not be contained in our prices; it shall be stated separately on the invoice at the statutory amount on the date of invoicing.

3.7 The use of bills of exchange shall be subject to our prior approval; their expenses and costs as well as the risk of punctual presentation and protests shall be charged completely to Client.

3.8 In the event of default in payment of Client, interest to the amount of customary bank debit interest, albeit at least 8% above the base interest rate of the ECB at the time, shall be charged by us, with the reservation of claiming further damage.

3.9 In the event of default in payment and justified doubts about the solvency or creditworthiness of Client, we shall be entitled to demand securities or pre-payments for outstanding deliveries or sundry services and to make all claims resulting from the business relationship due for payment immediately notwithstanding our sundry rights pursuant to § 321, German Civil Code.

3.10 Only undisputed or conclusive claims shall entitle Client to offsetting or retention.

4. Right of retention

4.1 The commodities sold shall remain our property until complete payment of our claims from the business relationship with Client. Client shall be entitled to dispose of the purchased commodities in the proper course of business.

4.2 The right of retention shall also extend to the complete value of products resulting from processing, mixing or combining of our commodities, with no obligation on our part being substantiated hereby. If there is processing, mixing or combining with commodities of third parties and their right of retention remains, we shall acquire co-ownership in the proportion of the invoice values of these processed commodities.

4.3 The claims against third parties resulting from the resale are hereby ceded to us by Client by means of security to the complete amount or to the amount of any share of co-ownership we may have (cf. Section 4.2), as the case may be. Client shall be entitled to collect the latter for us and for our account until revocation or until stoppage of its payments to us. Client shall also not be entitled to cede these claims for the purpose of collection of claims by means of factoring unless the obligation of the factor to effect the consideration to the amount of our share of the claim directly to us as long as claims still exist for our part against Client is substantiated at the same time.

4.4 Interventions of third parties, e.g. by seizures of the commodities and claims belonging to us, shall be notified to us immediately by Client by means of recorded delivery.

4.5 The commodities and the claims replacing them may not be pledged, transferred by way of security or ceded to third parties before complete payment of our claims.

4.6 We engage to release the securities accruing to us by request of Client to the extent that the value of our securities exceeds the claims to be secured by more than 10%. The selection of the securities to be released shall be a matter for us.

4.7 A non-exclusive, non-transferable right of utilisation to standard software shall accrue to Client within the framework of the agreed performance features on the agreed appliances in an unaltered form, albeit not without the appropriate appliance. Client shall be entitled to produce two back-up copies to secure data. An extended right of utilisation shall require specific written agreement. Client shall be liable in the event of a violation of the rights of utilisation granted to him to the complete amount of the damage incurred.

5. Delivery / performance

5.1 Delivery and performance periods shall only be binding if they have been expressly confirmed by us as being binding.

5.2 Delivery and performance periods shall commence with the date of the order confirmation. If no other agreement has been made, the delivery period shall be deemed complied with if the commodities have left the factory or the warehouse within the period or, for sundry services, if the sundry service is commenced within the period.

5.3 Compliance with delivery and performance periods shall presuppose the clarification of all technical questions, in particular punctual receipt of all the documents to be supplied by Client, necessary approvals and permission as well as compliance with the agreed payment terms and other obligations of Client. If the above mentioned prerequisites have not been fulfilled, the periods shall be extended to a suitable degree; this shall not apply to the extent that we shall be answerable for the delay.

5.4 Should we be prevented from punctual delivery or performance by orders or measures by authorities, force majeure, mobilisation, war, unrest, strike, lock-outs, incorrect or late delivery by suppliers or the occurrence of unforeseen obstacles outside our will or that of our suppliers, a suitable extension of the period shall be granted.

5.5 If the prevention of delivery or performance stated under Section 5.4 should have an unsuitably long duration, both contracting parties shall be entitled to withdraw from the contract. The right to withdrawal shall only accrue to Client following a fruitless expiry of a suitable subsequent period unless a fixed transaction customary in the trade has been agreed in writing. No other claims shall accrue to Client.

5.6 If the delivery or performance period is exceeded for reasons for which we are answerable, Client shall be entitled to withdrawal following the expiry of a suitable subsequent period. Claims to damage shall be based on the provisions of Section 10.

5.7 If Client causes a delay in dispatch or service of the objects of delivery or the implementation of sundry services, we shall be entitled to charge the additional expenditure incurred by us.

5.8 In the event of default in payment of Client, we shall be entitled to claim a right of retention for further deliveries or sundry performances.

6. Duties of cooperation

Insofar as we implement sundry services at any other place than our seat of business or our sundry services are in a dependence relationship to preparatory work of Client or a company commissioned by the latter, Client shall implement or arrange for all the preliminary work/cooperative actions necessary for the implementation of the work at its expense in such good time that prevention is not to be expected by us at the start of or during the implementation of the sundry performances. In particular, Client shall give us all the necessary documents (approvals, plans etc.) without specific request before the implementation of the work. Over and above this, the obligation of providing necessary consumables, protective devices and, if need be, tools and also imparting essential information shall also be the responsibility for Client.

7. Passage of risk

7.1 For deliveries, passage of chance destruction and change deterioration of the object of delivery shall pass to Client as soon as the object of delivery has been forwarded to the haulage company, freight conveyor or other person or institution intended for implementation of the dispatch and commissioned therefor by Client.

7.2 If dispatch of the object of delivery is done at a later delivery date than that agreed by request of Client or if the dispatch is delayed due to a circumstance for which Client is answerable, the risk of chance destruction and change deterioration shall pass to Client from receipt of the notification of readiness for dispatch.

7.3 If no separate agreement has been made, risk of destruction and chance deterioration of other total performances and also for independent part sections shall pass to Client from notification of completion. In the event of an agreement concerning trial operation, risk shall pass to Client with the end of the successful trial operation, albeit no later than 14 days after receipt of the notification of readiness for trial operation.

7.4 If the sundry performances or the trial operation are interrupted, delayed or stopped for reasons for which we shall not be answerable, risk of change destruction or change deterioration of the performances already rendered shall pass to Client with receipt of the notification of the hindrance.

8. Inspection

8.1 Inspection shall only be done in the course of sundry performance if it has been agreed in writing. If an inspection has been agreed, we shall be obliged to notify readiness for inspection.

8.2 If no agreement has been made about the precise time of the inspection, the inspection shall be done immediately after the implementation of the performance and, for major projects, within a period of 7 days after receipt of the notification of the readiness for inspection.

8.3 Inspection may not be rejected due to defects by which the functionality is not or only inconsiderably impeded.

8.4 If the inspection is not done within a period of 14 days after receipt of the notification of readiness for inspection for reasons for which we shall not be answerable, the inspection shall be deemed as having taken place with the expiry of this period.

8.5 An inspection shall also be deemed implemented if Client takes the object in question into use.

8.6 If an inspection has been agreed, the passage of risk shall occur upon inspection as a deviation from Section 7.3.

8.7 Client shall bear the costs of the inspection.

8.8 A certification of completion by an expert analyst within the meaning of the statutory provisions shall be equivalent to an inspection.

9. Warranty

9.1 All the information about suitability, processing and application of our products, technical consultancy and other information shall be given to the best of our knowledge; they shall not release Client either from its own examinations and tests or from the use or commissioning of qualified personnel. We shall only be liable for the specific uses of our products if we have been notified of them in advance and have confirmed them.

9.2 Client shall examine the commodities delivered for defects with regard to quality and purpose of use without delay upon receipt, by trial processing to the extent reasonable.

9.3 Notifications of defect shall only be considered if they are made without delay and in writing, enclosing documents or specifications, a description of the appearance of the defect and stating the version of the software.

9.4 Our obligation to warranty shall be restricted at our discretion to reworking or replacement delivery. For this purpose, Client shall grant us the time and opportunity necessary at our fair discretion. If reworking has failed twice, the statutory warranty rights shall accrue to Client, damage only to the prerequisites of these terms.

9.5 An exception from warranty shall be formed in particular by defects caused by Client or a third party commissioned by the latter due to faulty transport, improper storage, unsuitable foundations, improper installation, faulty assembly, wrong application, incorrect connection, faulty or improper operation or coming about as a result of excessive loads and unforeseen operating conditions, in particular, but not limited to, uncontrollable natural events (e.g. earthquake, storms) or electrochemical or electrical influences or as a result of normal wear and tear.

9.6 Warranty shall not be applicable if operating, installation or maintenance instructions have not been obeyed, alterations or modifications of the contractual object have been carried out or spare parts or consumables which have not been approved are used.

9.7 Commodities causing a notification of defects may only be returned with our express approval. In such a case, Client shall select proper and transport-safe packaging.

9.8 The parts replaced in fulfilment of warranty shall pass into our ownership upon dismantling.

9.9 We shall be liable for reworking or replacement deliveries to the same extent as for the original object of delivery up to the expiry of the warranty period applicable for the original object of delivery or performance.

9.10 The warranty period for new objects of delivery and sundry performances shall be twelve months from passage of risk unless we have caused the defect by malice aforethought or must be liable for a longer period due to statutory provisions.

9.11 We shall supply second-hand objects excluding any warranty in the event of nothing else having been agreed in writing.

10. Damage

10.1 To the extent admissible by law, our obligation to damages shall be ruled out.

An exception to this shall be:

- damage from injury to life, limb and health based on a breach of obligation for which we are answerable and
- sundry damage based on breach of obligation or essential breach of a contractual obligation (cardinal obligation) on our part due to malice aforethought or gross negligence. The claim to damages for the breach of essential contractual obligations shall be limited to the foreseeable damage typical for the contract provided there is no malice aforethought or gross negligence.

Breach of obligation by us shall be equivalent to that by our legal representatives or vicarious agents.

Any liability due to deceitful withholding of a defect, assumption of a guarantee or risk of procurement, according to the Product Liability Act or according to other cogent statutory provisions shall remain unaffected.

10.2 We shall only be liable for re-procurement of data within the meaning of Section 10.1 if Client implements the data protection measures suitable and customary and has also ensured that a reconstruction of the data and programmes is possible with justifiable efforts.

10.3 We shall not be liable for a breach of third-party protection rights to the extent that the breach of the protection rights is based on diagrams, developments or other information from Client.

11. Extended lien

11.1 A contractual lien to the objects reaching our possession on the basis of the commission shall accrue to us on account of claims from a commission with a performance commission as the basis of the contract.

11.2 We shall also be entitled to claim contractual lien on account of claims from work, sundry performances and deliveries carried out previously to the extent that they are connected with the object of the commission. The contractual lien shall only apply for sundry claims to the extent that they are undisputed or a final deed is presented and Client is the owner of the object of commission.

12. Venue and place of performance

12.1 Place of performance for deliveries and sundry performances shall be our seat of business.

12.2 The purchase contract shall be governed by German law with the exception of UN purchase contract law. Insofar as Client is a merchant, a public-law legal entity or special public-law assets, our seat of business is agreed as the exclusive venue. We shall however be entitled to sue Client at the court in the jurisdiction of which Client has its headquarters.