

## General Terms and Conditions of Delivery and Services of TWS GmbH

### 1) Scope

Contracts governing our deliveries and services are formed exclusively on the basis of the following terms and conditions. Any differing terms and conditions by the buyer are not applicable. These terms and conditions apply to contracts with enterprises, not consumers. Buyers for the purpose of these terms and conditions are also understood to refer to customers placing orders for work and services.

### 2) Conclusion of contract

- 2.1 Our offers remain non-binding until they are confirmed by us. Prior sale reserved.
- 2.2 The buyer is bound by his offer for three weeks. The purchase contract is only concluded following our written order confirmation or the delivery of the purchase items described in greater detail.
- 2.3 Amendments and addenda to the contract require our written confirmation in order to be valid unless the declarations are made by a corporate body, authorised company officers or authorised representatives from our company.
- 2.4 Our representatives are not authorised to make verbal undertakings of whatsoever nature to customers.
- 2.5 The assignment of the buyer's rights or obligations under the purchase contract to a third party requires our written consent.

### 3) Delivery times

- 3.1 A delivery time that has been agreed upon commences upon the dispatch of the order confirmation, not, however, before the buyer has furnished the documents, authorisations, clearances or other information for which he is responsible. Even advance payments agreed upon must have arrived before the agreed delivery time commences.
- 3.2 The delivery period is deemed to have been observed if the goods are ready for dispatch before expiry of the delivery period and the contract party has been notified that they are ready for dispatch or delivery.
- 3.3 If the seller does not receive supplies from its upstream suppliers due to circumstances beyond its control despite the fact that it has concluded an adequate covering transaction and has done so in good time, the seller and the buyer are entitled to withdraw from the agreement. Ongoing disruptions to operations caused by force majeure, strikes or shortages in raw materials entitle the seller to withdraw from the part of the contract that has not yet been performed. The delivery period will be extended reasonably if we are prevented from delivering on time due to circumstances beyond our control.
- 3.4 In the event of a delay the buyer is entitled to request, in writing, a grace period of at least two weeks. If this new deadline is not met the buyer is entitled to withdraw from the contract or to demand compensation as set out in point 8.4.

### 4) Dispatch and transfer of risk

- 4.1 The seller is free to choose the dispatch method.
- 4.2 The risk is transferred to the ordering party when the delivery items are dispatched at the very latest, even if partial deliveries are made or if the supplier has undertaken to render other services, e.g. cover the shipping costs or delivery to the installation site and assembly.
- 4.3 Partial deliveries are permitted provided this is reasonable from the purchaser's point of view.

### 5) Prices and ancillary costs

- 5.1 Unless otherwise expressly stipulated, prices are understood to include loading at the factory, but only the costs of packaging, transportation, insurance, assembly, commissioning and initial briefing. For any services rendered, the hourly rates and ancillary costs in force at any given time are applicable.
- 5.2 Prices are also understood to be exclusive of the value-added tax applicable on the delivery date.

### 6) Terms of payment

- 6.1 The invoiced amounts become due as soon as the goods are received. We will not charge any interest on payments received within 14 days of the invoice date.
- 6.2 In the event of a number of outstanding claims, incoming payments will be set off as follows if the payment is insufficient to cover all the claims: initially, the monies will be used to settle the claim indicated by the buyer upon payment. If the buyer makes no indication in this respect, the payment will be used to settle the outstanding claim with the least prospect of being settled from our point of view, otherwise the outstanding claim with the oldest invoice date.
- 6.3 If the buyer falls in arrears we are entitled to charge interest set at 8% above the prevailing base lending rate. We are also entitled, as we see fit, to charge the interest actually accrued.
- 6.4 The purchaser is not entitled to set off his own counterclaims against our claims unless such counterclaims are undisputed or have been legally established. The buyer is only entitled to exercise a right of retention if it is based on the same contractual relationship.

### 7) Retention of title

- 7.1 We retain title of the goods delivered by us (goods subject to retention of title) until the purchase price has been fully paid.

7.2 The ordering party is not entitled to sell, pledge or assign the delivery items by way of security. If the goods are seized or in the event of another encroachment by third parties, the ordering party must notify us without delay and draw the attention of the third party to our property rights.

7.3 In the event of breach of contract by the ordering party, in particular if the ordering party falls in arrears, we have the contractual right to take back the items delivered after sending a reminder to no avail. The ordering party is obliged to surrender the delivery items.

7.4 Based solely on the retention of title, we are entitled to demand that the delivery items be surrendered after we have withdrawn from the contract.

7.5 An application by the ordering party to open insolvency proceedings in respect of its own assets or the opening otherwise of similar insolvency proceedings entitles us to immediately withdraw from the contract and, in addition, to demand the immediate surrender of the delivery items.

### 8) Warranty and compensation

8.1 The warranty lasts one year following the delivery of new items. If used items are delivered no warranty for material defects is provided.

8.2 The ordering party must notify obvious defects within ten days of delivery. If the ordering party is a businessperson, he is also obliged to notify defects that are detected during a proper examination within ten days of delivery. The businessperson is obliged to notify other defects within seven days of their discovery.

A failure to adhere to the periods for notifying defects will exclude any warranty for the defects in question.

8.3 If the goods are faulty, we are initially entitled to rectify them or carry out additional deliveries as we see fit.

If the goods supplied are located abroad, the travel and accommodation costs incurred by our installers are not included within the scope of our obligation to rectify.

If supplementary performance is unsuccessful the ordering party, as he sees fit, is entitled to request a reduction in the purchase price or to withdraw from the contract.

He is only entitled to claim compensation as set out in point 8.4

8.4 The buyer's right to demand compensation in the event of any breach by the seller of its duties (section 280 German Civil Code) is excluded in the following cases:

- a) slightly negligible violations of non-material contractual obligations;
- b) slightly negligible violations of contractual obligations by persons merely acting in the capacity of vicarious agents (not legal representatives or managerial employees)

Liability in all cases is limited to the value of the subject matter of the contract.

These provisions do not apply to death or injury to body or health. In addition, the provisions of the product liability act remain unaffected. In a departure from point 8.1, the statutory periods of limitation are also applicable to such claims.

8.5 Point 8.3 is also applicable to repairs and maintenance. Otherwise, statutory provisions apply.

### 9) Copyright

We retain proprietary rights and copyright in respect of samples, cost estimates, drawings and similar information of a tangible and intangible nature – even in electronic format; they must not be made available to third parties.

### 10) Place of jurisdiction

10.1 All the legal relationships between us and the ordering party are governed by the laws of the Federal Republic of Germany to the exclusion of the UN Sales Convention (CISG).

10.2 The place of performance is Berlin.

10.3 If the buyer is a merchant who has been entered as such in the commercial register, a legal entity under public law or a special fund under public law, Berlin is the exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship. We are also entitled to bring legal actions against the ordering party before the courts with jurisdiction over the buyer's registered office.

(last amended Jan/2011)

## General Terms and Conditions of Purchase of TWS GmbH

The general terms and conditions of the contractor/supplier are not applicable to orders place with us. Otherwise, our terms and conditions of purchase are exclusively applicable, first, and then statutory provisions.

The place of performance is Berlin.

If the customer is a merchant who has been entered as such in the commercial register, a legal entity under public law or a special fund under public law, Berlin is the exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship. The laws of the Federal Republic of Germany are applicable to the exclusion of the UN Sales Convention (CISG).

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