

## **General terms and conditions**

### **1. Scope of application**

- 1.1 The following terms and conditions apply to all goods delivered and services provided, unless otherwise agreed in writing. Deviating agreements apply solely to an individual contract and not to future contracts, unless otherwise agreed in writing.
- 1.2 The General Terms and Conditions apply to merchants only if the contract belongs to a commercial enterprise, as well as to legal persons under public law and special funds under public law according to § 310 I 1 *BGB* [German Civil Code].
- 1.3 The General Terms and Conditions of GWT-TUD GmbH (hereinafter: GWT) apply exclusively. Commercial conditions of the contractual partner are not valid, even if GWT does not expressly object to them. The same applies even if GWT provides the performance owed while aware of conflicting general terms and conditions of the contractual partner.

### **2. Offers, conclusion of contracts and scope of performance**

- 2.1 The services and/or work performances are provided in accordance with the applicable legal requirements, unless otherwise agreed in these General Terms and Conditions.
- 2.2 GWT is entitled to use the services of third parties to carry out orders, with GWT remaining directly liable towards the client.
- 2.3 Changes of the agreed scope of performance are to be determined in writing.
- 2.4 GWT is entitled to partial performance and partial provision of services at any time, provided this is reasonable with regard to the contractual partner.
- 2.5 Dates, terms, dimensions, weights, results of simulations, drawings etc. have a non-binding character, unless expressly confirmed in writing.
- 2.6 Information in catalogues, advertising statements, statements in other publications and statements of third parties do in no way constitute grounds for contractual claims for performance, warranty claims or damage claims toward GWT.
- 2.7 Covenants and warrants on the quality of goods delivered and services provided are granted only by express written agreement.

### **3. Obligation to co-operate of the contractual partner**

- 3.1 The contractual partner undertakes to ensure that GWT is provided at no cost and in due time with all necessary documents, data and information, and that it is informed of all events and circumstances regarding the project. This also applies to documents, events and circumstances that become known only during the activities of GWT.
- 3.2 Furthermore, the contractual partner is to ensure that the corresponding infrastructure required for the execution of the projects is provided. This includes the cost-free access to all rooms, installations (hardware, software, networks etc.) as far as this is required for the regular performance of the services due.

### **4. Prices and payment conditions**

- 4.1 The services and work performances are calculated at the fixed price indicated in the offer or on a time and material basis after completion or acceptance of the services, unless otherwise agreed in writing. Estimated prices contained in the offer for services and work performance on a time and materials basis are non-binding. Costs for travel, accommodation and overnight expenses are charged additionally.
- 4.2 The respective pricing information is submitted in EURO and is exclusive of Value Added Tax (VAT) and exclusive of packaging, insurance, freight, assembly and other shipping and transport costs.
- 4.3 Legal applicable VAT at the time the performance is provided is to be added to the agreed prices and shown separately on the invoice.
- 4.4 The payments are to be made to the bank account of GWT as detailed in the invoice without deduction within 14 days after the receipt of the invoice while stating the invoice number and the intended use.
- 4.5 If change requests from the client are processed, the additional costs arising from this are invoiced additionally to the client.
- 4.6 In case of default of payment on the side of the contractual partner, GWT is entitled to charge default interest to the amount of 8 percent above the respective applicable base interest rate of the European Central Bank. The contractual parties are free to prove a lower or higher interest damage.

## **5. Setting off and retention**

- 5.1 The contractual partner has the right to set off only if the claim to setting off is undisputed and has been confirmed to be legally valid.
- 5.2 The contractual partner is entitled to exercise its right of retention only to the extent as its counterclaim relies on the same contractual relationship.

## **6. Acceptance**

- 6.1 Work performances are to be accepted by the client. The handover of the performance and the compliance with the technical specifications agreed are to be recorded by the contractual partner without delay. A different type of handover may be agreed by the contractual parties.  
Insignificant deviations do not entitle the client to refuse acceptance.
- 6.2 The commissioning or use of the work or of parts of the work represents an acceptance.
- 6.3 The performance shall also be considered as regularly accepted if the contractual partner does not declare acceptance within two weeks following the handover and if the contractual partner is obliged to grant acceptance pursuant to § 640 I BGB.

## **7. Claims for defects**

- 7.1 The work performance is to meet the agreed technical specification and the agreed scope of performance and is to be provided to the client free of technical and legal defects.
- 7.2 GWT does not accept liability regarding the actual possibilities of implementing the project or its commercial usability as long as the performance provided corresponds to the performance owed.
- 7.3 The contractual partner undertakes to inspect the goods immediately after receiving them if this is reasonable in the usual course of business. Any defects found are to be indicated to GWT in writing without delay. If the contractual partner fails to indicate a defect, the goods are considered accepted, unless the defect could not have been found in the inspection. For the rest, the Articles 377 ff. *HGB* [German Commercial Code] apply.
- 7.4 If a defect occurs, GWT may choose to either rectify it or redeliver (supplementary performance). If a supplementary performance is to take place, GWT is to be granted a reasonable period to carry out the supplementary performance. If the supplementary performance fails, the contractual partner is entitled at its own discretion to demand a reduction of the remuneration or a rescission of the contract.
- 7.5 GWT may decline supplementary performance if this should require an effort that is largely disproportionate in relation to the performance interest of the contractual partner. In such a case,

the contractual partner may demand a reduction of the remuneration or rescind the contract.

- 7.6 Claims for defects cannot be asserted if the deviation from the agreed quality is merely insignificant, if the usability is affected merely to an insignificant degree, in case of natural wear and tear or in case of damages occurring after the passing of risk due to improper or negligent use, excessive loads, improper equipment or due to special external factors that were not included in the contract.
- 7.7 If the contractual partner or third parties carry out modifications or repair works, this also precludes any claims for defects.
- 7.8 Claims based on technical defects and defects of title expire after 12 months unless differing legal terms are stipulated (such as by §§ 438, 479, 634a I BGB).

## **8. Work results**

- 8.1 GWT remains the owner of existing copyrights, inventions and other intellectual property rights (Background rights).
- 8.2 Inventions made during the performance of an order by employees of GWT or by third parties commissioned by GWT are property of GWT unless otherwise agreed in writing. Furthermore, GWT grants rights of use, even with regard to new work results achieved in the frame of projects, only by separate contractual written agreement.
- 8.3 In case of inventions made jointly by employees of GWT and the client during the performance of an order, as well as property rights granted for these, both contractual partners shall be entitled to the respective rights.
- 8.4 GWT does not accept liability for the infringement of rights of third parties in connection with the use of the documents or services of GWT by the client, unless GWT is aware of this at the time of the handover of the performance and has not informed the client of this due to gross negligence or wilful misconduct.
- 8.5 Labelling may not be removed, destroyed, made illegible, modified or used otherwise.

## **9. Liability**

- 9.1 The liability of GWT extends to the use of scientific care and compliance with the generally acknowledged rules of technology.
- 9.2 GWT is liable toward the contractual partner, pursuant to the Product Liability Act, for damages to life, body and health, in other cases of wilful conduct, gross negligence or warranties granted. Furthermore, liability is accepted for cases of simple negligence if duties significant for the transaction were infringed. Duties significant for the transaction are such duties whose compliance is essential for the performance of the contract and

can be expected by the contractual partner. Damage claims based on the infringement of essential contractual duties are limited to damages that are typical for the type of contract and can be foreseen.

- 9.3 Furthermore and beyond this, GWT does not accept liability unless legally obliged to do so. Any liability for consequential damage is expressly excluded.
- 9.4 The exclusion of liability applies also to vicarious agents and servants as well as employees of GWT and third parties commissioned by GWT.
- 9.5 The contractual partner informs GWT of all circumstances known to it which may be relevant for the existence of a risk of damage as well as the extent of the potential damage.
- 9.6 In case of work performances, GWT is liable for damages caused by delay incurred by the client if a final date agreed in the offer is exceeded solely for reasons for which GWT is responsible. The damage caused by delay is limited to the proven damage incurred by the client and is limited to the amount of 0.5 percent for each complete week of delay, but may never be more in total than 5 percent of the overall remuneration of the performance part in delay. At the same time, the client is to declare whether it wants to rescind the contract and/or demand damage payments instead of the performance, or whether it insists on the performance.

## **10. Confidentiality**

- 10.1 The contractual partners undertake not to pass Confidential Information on to third parties without the prior written approval of the disclosing party and to use it only for the purposes of the agreement. Also, the information may not be used for own purposes. All required measures must be met to ensure that unauthorised parties cannot have access to such information.
- 10.2 Confidential information is information that is expressly denominated as such, as well as information that is considered confidential by nature.
- 10.3 Information is not to be considered confidential if it is proven that it:
- was known to the contractual partner before it was received,
  - is known to the general public,
  - was made available to the general public after it was received by the contractual partner, without the contractual partner being responsible for this, or
  - was lawfully disclosed to the contractual partner by a third party.

If the duties of this agreement are breached, the breaching contractual party has the burden of proof for this matter of facts.

10.4 The duties from this present provision continue to apply for both contractual partners for a term of 3 years following the completion of the order.

10.5 The client acknowledges that the GWT or third parties commissioned by GWT need to be able to hold scientific lectures and release scientific publications, and will not refuse a required approval without reason.

10.6 Drawings, designs and other documents provided by GWT or its subcontractors remain property of GWT unless otherwise agreed in writing. They may not be used for purposes other than those agreed, not be copied or disclosed to third parties and must be handed back to GWT immediately following the completion of the contract or the termination of a project or at the request of GWT.

## **11. Data security**

The contractual partners will process or use personrelated data of the respective other contractual partner only for contractually agreed purposes and in compliance with the legal provisions.

## **12. Termination**

- 12.1 Unless otherwise agreed in writing, contracts can be terminated at any time with 30 days' notice at the end of the month.
- 12.2 The right to terminate for important reason remains unaffected.
- 12.3 In case of a termination, GWT will inspect the result achieved thus far. The client undertakes to hold GWT harmless for the expenses incurred until the time the termination takes effect, including a profit corresponding to the progress of the works. For the case of fixed prices, the accounting is done according to the status of the project in relation to the whole works. In addition, GWT is entitled to remuneration for the liabilities incurred by GWT until the time of the termination.
- 12.4 The written form requirement applies.

## **13. Final provisions**

- 13.1 The transfer of rights and duties of the contracts from the client to third parties requires the prior written approval of GWT.
- 13.2 The invalidity of individual provisions or parts of this contract does not affect the validity of the remaining provisions.
- 13.3 The inclusion and interpretation of these General Terms and Conditions are governed exclusively by the laws of the Federal Republic of Germany, as are the conclusion and interpretation of legal transactions with the contractual partner.

13.4 The place of jurisdiction is Dresden for all disputes arising from this agreement.