General Terms and Conditions of N-WISSEN GmbH

1. Scope

1.1

These Terms and Conditions shall apply to all agreements which commit us to any kind of deliveries (including work and services etc.) in commercial transactions with businesses and legal entities under German public law or a separate fund under public law – hereinafter referred to as customers.

1.2

The customer confirms the following conditions by placing an order.

1.3

Any additional or different (purchasing) terms and conditions of the customer are hereby rejected. These terms and conditions apply only if we confirm this in writing.

1.4

These Terms and Conditions apply to all future supplies and services without future contracts having to refer in particular to them.

2. Quotations and Conclusion

2.1

The quotations contained in our catalogues, brochure, and other sales documents and in the internet (to the extent not expressly designated as binding) are always subject to change without notice, i.e. only to be understood as a request for a quotation.

2.2

All contractual agreements between us and the customer require the written form, or must be confirmed by us in writing. An order which does not meet this requirement becomes binding when we accept to dispatch the goods or perform other services.

2.3

Our employees and sales representatives are not entitled to oral side agreements (especially assurances) that are beyond the scope of the written contract. The aforementioned regulations shall not apply to oral declarations by the management or by persons with unrestricted authorizations from us.

2.4

We reserve the right to allow for minimal/insignificant deviations in the goods/service from the information in our catalogues or offers. To this extent, specifications as to dimensions, weight, performance and characteristics, etc., as well as illustrations and other technical information in catalogues, promotional letters, etc. are not binding.

2.5

The minimum order value is currently EUR 75.00 plus statutory value added tax. For orders under this limit, we charge a handling flat rate to the amount of EUR 25.00.

2.6

When we declare our agreement to a customer request for the cancellation of an order, without the existence of a defect or error in delivery on our part, we are entitled to charge the customer for all costs/damages incurred by us as a result of the cancellation (e.g. with regard to our suppliers) incl. compensation for lost profits. We are furthermore entitled to charge a processing fee to the amount of 25 % of the value of the goods; however, at

least EUR 50.00 plus VAT. Goods delivered by us will only be accepted by us for return in faultless condition and carriage paid.

3. Terms of Delivery, Part Orders and Delays

3.1

To the extent that a delivery period has not been designated on our part as being binding, it shall only be deemed agreed approximately. It shall be extended the time period between the date of conclusion of the contract and the date of clarification of all technical and other details of the order, production of all and any necessary documents as well as time periods in which Buyer is in arrears in its contractual duties (e.g. agreed-upon advance payments).

3.2

We are entitled to render part services and make part deliveries insofar as this is not unreasonable for the customer.

3.3

A performance or delivery period shall be suitably extended – also within arrears – upon the occurrence of force majeure and all unforeseen obstacles occurring after conclusion of the contract for which we are not responsible (in particular, also disturbances of operation, strikes, lock-outs or transport disturbances), insofar as such obstacles can be proven to have a considerable influence on the planned performance or delivery. This shall also apply if these circumstances occur with our suppliers or sub-contractors. We shall notify the customer of the start and end of such obstacles as soon as possible. The customer can then demand a declaration from us as to whether we wish to withdraw from the contract or deliver within a reasonable period. If we do not make such declaration without delay, the customer can withdraw from the contract. In such a case, claims to damages shall be ruled out.

3.4

With regard to punctual deliveries, we shall only be liable for our own responsibility and that of our vicarious agents. We shall not be answerable for delays of our previous suppliers. However, we engage to assign any claims to damages against the previous suppliers to the customer.

4. Consignment, Transfer of Risk

4.1

Unless otherwise agreed, the place of performance is the registered office of our company or our participating branch. We ship and insure the goods upon request from the customer and to the customer's cost from the place of fulfilment or directly from the manufacturer's works.

4.2

Route and means of dispatch shall be at our discretion. Additional costs caused by shipping wishes of the customer shall be charged to the latter.

4.3

Risk shall be transferred to the customer with hand-over of the goods to the forwarder. This shall also apply to part and pre-paid deliveries. In the event of delivery with our vehicles, risk shall pass to the customer as soon as the goods have been provided to it at the place stated by it.

4.4

If consignment or agreed collection is delayed at customer's instigation, the goods shall be stored at the expense of the customer and risk. In such a case, notification of readiness for dispatch shall be equated to dispatch. The invoice for the goods shall be due for payment immediately upon start of storage.

5. Prices and Terms of Payment

5.1
Prices shall apply ex place of performance plus packaging, freight/delivery charges, and flat rates pursuant to section 2.5 and the valid value added tax.
5.2
Should delivery occur more than 3 months after conclusion of the contract, we reserve the right to increase our prices in accordance with price list valid at that time or to increase them in proportion to increases in costs which have occurred since conclusion of the contract.
5.3
We shall be entitled to demand advance payments if we have provided sub-services according to section 3.2 or if the customer delayed our performance without section 4.4 coming into effect.
5.4
If not agreed to the contrary, our deliveries and services shall be due for payment without deduction after 10 days and the customer is in default 30 days after receipt of the invoice or reception of the service as per § 286 para. 3, German Civil Code. If circumstances become known after conclusion of the contract which lead us to conclude, based on the necessary commercial criteria, that the payment of the purchase price in accordance with the contract is put into question by the buyer's lack of performance or desire to provide such (e.g. delays in payment for other deliveries from us or third parties), we are entitled to demand, setting an appropriate deadline, that the buyer choose between a pay-as-paid solution, advance payment or sureties. Advance payment is due immediately.
5.5
A deduction of discount shall require specific agreements. Payments shall always be used to settle the oldest due outstanding items, plus default interest incurred thereon. Assured discounts shall not be granted if Buyer is in arrears with the payment of earlier deliveries.
5.6
Credits by means of cheques shall be less necessary expenditure for encashment with value date on the day on which we can dispose of the equivalent value.
5.7
Default interest shall be charged at 8 % p.a. above the basic rate of interest (§ 247 German Civil Code) insofar as we incur no greater losses.
5.8
The assertion of right of retention and off-setting by the customer on the basis of counter-claims which are disputed or not legally established is excluded.
5.9
We may accept a bank guarantee to satisfy the agreed provision of security.

6. Retention of title

6.1
We retain title to the goods until payment of the purchase price or remuneration for a contract of work is made in full. For goods which the customer (including principals of a work contract) purchases from us in the context of an ongoing business relationship, we retain title until all our receivables from the business relationship have been settled, including the receivables originating in future – also from contracts concluded simultaneously or later. This shall also apply if individual or all our receivables have been written to an open account and the balance has been struck and accepted. In the event of arrears in payment of the buyer, we shall be entitled to take back the goods following a reminder and the buyer shall be obliged to return them.
6.2
If the conditional goods are combined with other goods by the customer, co-ownership of the new object shall accrue to us in the ratio of the value of the invoice of the conditional goods to the invoice value of the other

goods and the value of processing. If our ownership expires due to combining, blending or processing, the customer transfers the rights accruing to it to the extent of the invoice value of the conditional goods as early as conclusion of the contract and shall keep them on our behalf free of charge. The ownership rights originating thereby shall be deemed conditional goods within the meaning of sub-section 6.1.

6.3

The buyer may only sell the conditional goods in the customary course of business at its normal terms and conditions of business and as long as it is not in arrears, provided the claims from the resale pass to us pursuant to the following sub-sections 6.4 to 6.5. It shall not be entitled to further disposals of the conditional goods. Installation of the goods in a construction shall also be deemed resale.

6.4

Buyer's claims from the resale of the conditional goods are assigned to us. They shall serve as security to the same extent as the conditional goods. If the conditional goods are sold by the customer together with other goods not supplied by us, the claim from the resale shall be assigned in the ratio of the invoice value of our goods to the other goods sold. In the sale of goods to which we have co-ownership shares pursuant to sub-section 6.2, a part corresponding to our share of co-ownership shall be assigned to us.

6.5

The buyer shall be entitled to collect claims from resale unless we recall the collection power in the cases stated in sub-section 5.4, sentence 2. Upon request by us, the buyer shall be obliged to notify its customers of the assignment to us straight away – insofar as we do not do this ourselves – and to give us the documents and information necessary for collection (basis of claim and amount, name and address of debtor. The buyer shall not be entitled to further assignment of the claim, unless this involves assignment by means of genuine factoring. In this event, we must be notified in advance of the name of the factoring bank and the accounts of the buyer kept there, and it is agreed with the factoring bank that our claim shall become due for payment immediately upon crediting of the yield from factoring. This assumes that the yield from the factoring exceeds the value of our secured claim, and that the account is not subject to secured claims from other parties.

6.6

Insofar as the value of the conditional goods is involved, it shall result from our invoice value. We engage to release collateral accruing to us upon request by buyer to the extent that its realis-able value exceeds the claims to be secured by 10 %.

6.7

The buyer shall inform us immediately of any interventions by third parties against the conditional goods and the assigned claims.

7. Warranty, Consequences of, Notification of and Liability for Defects

7.1

We shall only be liable for defects, short deliveries and wrong deliveries in the services we render if the customer has examined the goods received for quantity and property without delay, and notified us of obvious and/or recognisable defects, short deliveries and wrong deliveries shall be notified in writing within 7 days from receipt of delivery item, in any case before processing or installation. Further-reaching obligations for commercial transactions pursuant to §§ 377, 378 German Commercial Code shall remain unaffected.

7.2

If the buyer establishes defects in the goods/services, it may not dispose thereof, i.e. they may not be divided, resold or processed, until an agreement on the handling of the notification of defects has been achieved or proceedings for securing of evidence have been carried out by an expert commissioned by the Chamber of Industry and Commerce at buyer's registered office.

7.3

The customer shall further be obliged to grant us the opportunity of establishing the defect notified on-site or,

at our request, to provide us with the object giving rise to complaints or samples thereof; in the event of culpable rejection, warranty shall be forfeited.

7.4

We assume warranty only for defects which were present at delivery/acceptance, and thus not for damage attributable to unsuitable or improper use, faulty assembly, commissioning, amendment or repair not carried out by us, faulty or negligent treatment or natural wear and tear.

7.5

In the event of justified complaints, we shall be entitled to determine the nature of subsequent performance (replacement delivery, reworking).

7.6

The expenditure necessary for subsequent performance, in particular transport and travel expenses, shall not be borne by us to the extent that it is based on the fact that the purchased item has been taken to a place other than the location of the professional activity or commercial branch establishment of the recipient after receipt, unless such move corresponds to the intended use of the object. Claims to recourse pursuant to §§ 478, 479 German Civil Code shall remain unaffected.

7.7

Claims to defect in quality shall be barred by limitation after 12 months. This shall not apply to the cases falling under §§ 438 sub-section 1 no. 2 (buildings and objects for buildings), § 479 (claim to recourse) and § 634a sub-section 1 no. 2 (building defects) German Civil Code.

7.8

Section 8 (General limitation of liability) shall apply to claims of damages and to claims for compensation for expenditure.

8. General Limitation of Liability, Reference to Chemicals

8.1

Claims to damages and reimbursement of expenditure of the customer (hereinafter claims to damages), regardless of the legal reason, in particular due to breach of duties from a contractual relationship and from tort, are ruled out to the extent that we are not guilty of gross negligence and / or of violation of fundamental contractual obligations (so-called cardinal duties). The claim to damages shall, however, be limited to the foreseeable damage typical for the contract and our coverage limited to the amount of public liability insurance concluded by us in the scope of normal diligence. Exclusion of liability shall not apply in cases of assumption of a guarantee or a procurement risk. Furthermore, this shall not apply to the extent that we are cogently liable, e.g. according to the Product Liability Act, in cases of gross negligence, on account of injury of life, limb or health.

8.2

Reference to chemicals: We advise you to the best of our knowledge within the possibilities granted. Our information, recommendations and tips do not release you from the necessity to examine our products under your own responsibility for suitability for the purposes envisaged by you. Existing laws and directives shall be complied with in all cases. This shall also apply with regard to all and any protective rights of third parties.

9. Return of Devices and Declaration of Decontamination of the Purchaser

9.1

Insofar as the buyer is an end customer engaged in business activity, we shall take back the devices sold to the former after 13/08/2005 after cessation of use in accordance with the so-called Elektrogesetz (Electrical and Electronic Equipment Act) of 23/03/2005 (Federal Law Gazette. I pg. 762) and properly dispose of these. The end customer, however, must assume the return delivery and disposal costs or compensate us for such. The end customer must inform us in writing as to the cessation of use.

9.2

The claim to assumption of costs by the end customer does not expire before 2 years after the cessation of use.

This two-year term begins at the earliest after receipt by us of the written notification from the customer as to the cessation of use.

9.3

In the event that the buyer is a commercial dealer, it must oblige its customers – insofar as these are likewise engaged in business – to ensure that such customers in turn dispose of the device at the cessation of use in proper fashion and at own expense. Should the buyer neglect to do so, it must thus itself take back the devices delivered at the end of use at its own expense and properly dispose of them.

9.4

Devices or other materials, that are handed over to N-WISSEN, need to be decontaminated by the purchaser respectively the enduser if it had been in contact with potentially infectious material. The decontamination is confirmed by a certificate of decontamination that must be attached to the product. The purchaser or the enduser takes the full responsibility for any kind of damage that occurs because of a missing decontamination.

Every owner is obliged to hand over these information at sale or delivery.

10. Data Protection

The customer is hereby informed that we process and store personal data obtained in the course of the business relationship via electronic data processing, pursuant to the provisions of the German Federal Data Protection Act.

11. Place of Performance, Place of Jurisdiction, Applicable Law

11.1

Place of performance for all supplies and exclusive place of jurisdiction for all and any disputes arising from the supply agreement (including cheque and bill actions) shall be the registered office of our company in 63073 Offenbach am Main, Germany or that of our branch involved in the contract. However, we shall also be entitled to bring suit against the customer at its place of jurisdiction.

11.2

The contractual relationships shall be regulated exclusively according to the law valid in the Federal Republic of Germany, excluding UN purchase law.