

General Terms and Conditions of Sale of dhs Dietermann & Heuser Solution GmbH

§ 1 Scope of General Terms and Conditions

1) These General Terms and Conditions govern the provision and/or execution of all current and future services and deliveries by the contract parties.

2) All current and future deliveries, services and offers of dhs Dietermann & Heuser Solution GmbH are performed on the basis of these General Terms and Conditions. dhs Dietermann & Heuser Solution GmbH does not recognise any contradictory terms of purchase or other terms of the customer. dhs Dietermann & Heuser Solution GmbH hereby revokes any customer confirmation containing a reference to the customer's general terms and conditions and terms of purchase.

§ 2 Storage of Data

We store and process data relating to the customer by electronic means to the extent that our business so requires and is permitted by the Federal Data Protection Act (Bundesdatenschutzgesetz).

§ 3 Conclusion of the Contract,

Our offers are without obligation in relation to price, quantity, delivery date, availability, technical data, specification and description of quality. A contract is concluded where we acknowledge an order in written or text form or where we supply orders placed. Any alteration or supplement to the terms of a contract or the setting aside thereof or of these terms and conditions shall not take effect unless in written form.

§ 4 Pricing, Terms of Payment

1) All prices are calculated as EXW registered offices of dhs Dietermann & Heuser Solution GmbH (Incoterms 2000) and are listed at their net value plus the statutory value-added tax applicable at the time of the conclusion of the contract. To the extent that ongoing performance is owed, the value-added tax rate applicable at the due date of the respective sum owed shall apply. Except where otherwise agreed our prices do not include packing, insurance, freight, installation and training.

2) dhs Dietermann & Heuser Solution GmbH may offset a customer's payment against the oldest debt owed by such customer first, even if instructed otherwise by such customer. If costs and interest have already accrued, dhs Dietermann & Heuser Solution GmbH may offset payments first against costs, then against interest and finally against the primary payment obligation.

3) Customers of dhs Dietermann & Heuser Solution GmbH may only make offsets against those claims that are undisputed or have been finally adjudicated by a court of law. Customers may not exercise a right of retention arising from other contractual relationships with dhs Dietermann & Heuser Solution GmbH under this contractual relationship.

4) Bills of exchange and cheques are accepted only as provisional performance and not in lieu of performance. We expressly reserve the right to accept or reject the same. Discounting and bill charges shall be borne by the customer and shall be due for immediate payment.

5) dhs Dietermann & Heuser Solution GmbH may assign their trade accounts receivable for financing purposes.

§ 5 Default of Payment

1) Except where otherwise agreed the purchase price is due for payment by the customer 30 days from the date of invoice. Upon expiration of the 30 day period the customer shall be deemed in default of payment and dhs Dietermann & Heuser Solution GmbH may charge interest in the amount of 5 % above the respective base lending rate plus applicable value-added tax. In legal transactions in which a consumer is not involved, the interest rate for remuneration claims amounts to 8 % above the base lending rate. Any interest accrued is due and payable immediately.

2) Non-compliance with the terms of payment or circumstances casting serious doubts on the customer's creditworthiness shall entitle dhs Dietermann & Heuser Solution GmbH to discontinue working on all orders of the customer and to request immediate advance payment of all claims including bills of exchange and deferred amounts and to demand appropriate security therefor.

3) Where the customer is in default of acceptance, the risk of accidental deterioration and accidental loss transfers to the customer.

§ 6 Delivery Date, Late Delivery

The commencement of the delivery term stated shall be subject to clarification of all technical matters and proper performance by the customer of his obligations. Where we fail to deliver upon an agreed delivery date and such failure is caused by an act or omission on our part the customer shall grant us an extension in writing of not less than 2 weeks. Where delivery is still non-forthcoming and the customer desires to rescind the contract or demand damages in lieu of performance the customer shall prior thereto set a final and reasonable deadline in writing expressly indicating his intention. The customer is obliged at our request to declare within a reasonable period whether he

shall rescind the contract due to the delay in delivery and/or demand damages in lieu of performance or insist upon performance

§ 7 Software Licence

We hereby grant the customer a non-exclusive licence (software licence) to use the goods (software and associated documentation – hereinafter referred to as the "software"). The grant of licence aforesaid applies solely to the object code of the software version expressly referred to in the purchase order. The customer shall only copy or reproduce the software for the purpose of utilising the software in the agreed manner (e.g. installation of the software, loading thereof in main memory) and/or for the purpose of making a back-up copy. Reproductions of any other kind including the printing of the program code and the copying of documentation are only permitted where we have previously consented to the same. The customer is not permitted to reverse assemble or reverse compile the software or to convert it into any other form unless such conversion is expressly provided for by a mandatory statutory regulation. The customer undertakes to attach the copyright symbol to all complete and part copies of the software (including data carriers) together with all other references to industrial property rights in the same manner as they are attached to the original version of the licensed software. Any licence granted by us shall only be assigned to a third party where we have previously consented to the same in writing. We shall not unreasonably withhold consent. The customer shall not grant a sub-licence or make the software available to third parties temporarily or in any way give a third party access thereto without our previous consent in writing. The aforesaid shall not apply where the customer uses the software for its own means through its employees or agents provided that the customer has undertaken steps to ensure that such persons are bound by the terms of this licence. The customer is obliged to keep a record of the software including any updates, where the software is kept and the number of copies made. The customer shall produce such records where we so request.

§ 8 Reservation of Ownership

Notwithstanding delivery we retain the right to use the goods which shall not pass to the purchaser until we have received payment in full for the same. Where the purchaser is in breach of any of the terms herein including without limitation default of payment we are entitled to rescind the contract and retake possession of the goods. The purchaser is obliged to surrender possession or destroy all copies thereof.

In the event that the above retention of title clause is void or unenforceable according to the law of the state/country in which the goods are situated, the collateral security which corresponds to the retention of title in that state/country is deemed to be agreed. The purchaser is obliged to undertake all necessary steps required to found and maintain comparable rights or securities

§ 9 Product Description

The description of all dhs Dietermann & Heuser Solution GmbH products is determined exclusively by our general technical instructions. The extent of our liability for our product or service particulars is limited to the terms and conditions set out in each individual contract. We reserve the right to make technical changes in the course of our product development. Our product descriptions and particulars describe the quality of our products and services and do not constitute a guarantee within the meaning of § 443 of the German Civil Code (BGB). The customer undertakes to test our products and services itself as to their suitability for the purpose intended.

§ 10 Warranty

1) In the event that the goods should turn out to be defective, the customer will notify dhs Dietermann & Heuser Solution GmbH immediately, describing the nature of the defect or defects. The customer is required to examine the goods for obvious defects. Obvious and easily correctable defects must be notified in writing within two weeks after delivery and filed as a complaint whereupon we shall at our option deliver a replacement or remedy the defect. The customer shall grant us a reasonable period of not less than 8 working days to carry out the same. 2) The contractual warranty is limited to two years upon delivery or acceptance, provided this has been agreed. Warranty claims against dhs Dietermann & Heuser Solution GmbH are due only to the direct customer and cannot be assigned.

3) In the event that we are not in a position to remedy the defect or deliver a replacement the customer is entitled to rescind the contract or demand a reasonable reduction in the purchase price. Rescission of the contract is only permissible where the customer prior thereto sets a final and reasonable deadline in writing expressly indicating his intention..

4) There is no warranty for used goods.

§ 11 Liability

Liability for damages or expenditure (hereinafter liability for damages) irrespective of the legal grounds upon which it is claimed but in particular for breach of a contractual term or a tortious act shall be excluded except where we, our legal representatives or vicarious agents have acted wilfully or in a grossly negligent manner or where the breach goes to the root of the contract.

Our liability for a negligent breach which goes to the root of the contract is limited to reasonably foreseeable damages and shall not exceed twice the invoice amount. Our liability for the loss of data or programs due to acts or omissions on our behalf is limited to the amount of damages incurred or would have been incurred had the purchaser made a back up copy of the data at appropriate reasonable intervals or at least once per day.

The said exclusion / limitation of liability shall not apply in relation to strict liability claims for death or personal injury or damage to items of property for personal use under the Product Liability or any other Act

§ 12 Limitation

The limitation period for claims based on defective deliveries or performance as well as for claims for damages is 1 year. The limitation period aforesaid shall not apply where longer limitation periods are prescribed by law, as well as in cases of injury to life, body or health due to wilful or gross negligent behaviour on our part and in relation to damage claims based on product liability law.

§ 13 Duty to store data

The customer undertakes to make a back up copy of all data and programs at adequate intervals or at least once per day in a machine legible form and thereby to guarantee that such data can be reproduced at a reasonable expense. Failure by the customer to comply with the aforesaid shall constitute a fundamental breach of the contract.

§ 14 Force Majeure

In the event of a force majeure we are entitled to suspend performance of our obligation to deliver. Where there is a considerable change in the circumstances prevalent at the formation of the contract, we reserve the right to rescind the contract. The same shall apply in cases of shortages of power or raw materials, industrial disputes, governmental measures, interruption of operations, hindrance of traffic routes and defects or delays by sub-contractors caused by any such circumstance referred to in this clause.

§ 15 Place of Performance, Venue, Choice of Law

- 1) The place of performance for all contractually agreed services is Greifenstein, Germany unless otherwise agreed by contract.
- 2) The forum for the institution of proceedings shall be our corporate domicile. We retain the right however to sue the customer before any competent court.
- 3) All contracts shall be governed by and construed in accordance with German law.

§ 16 General Conditions of Contract

- 1) The contract parties have not made any oral arrangements. Contracts, subsequent additions or changes to existing agreements must be drawn up in writing. The written-form requirement may not be waived orally.
- 2) Should one or more provisions of these General Terms and Conditions or of a contract with the customer or of any further conditions and agreements based on these General Terms and Conditions or on a contract with the customer be or become invalid, or should there turn out to be an omission, the validity of the remaining provisions shall not be affected thereby. An appropriate valid provision is to replace the invalid provisions or remedy the omission, and such valid provision will be one that the contracting parties had desired or would have desired according to the intent and purpose of the conditions, had they considered the invalidity of the omission.