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## **General terms and conditions of sale and order**

**Status: December 2021**

### **I.**

#### **Section: General terms and conditions**

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

1.1 These general terms and conditions (GTC) apply exclusively to all contracts of Wietmarscher Ambulanz- und Sonderfahrzeug GmbH, Darwinstr. 11, 48488 Emsbüren (hereinafter referred to as the Contractor) for deliveries and services. The Client's terms and conditions shall not apply to the contract, even if the Contractor does not object to them, unless the Contractor expressly agrees to their application. Conflicting or supplementary terms and conditions of the Client shall not apply even if the Contractor performs the delivery or service without reservation in the knowledge of the Client's terms and conditions.

1.2 The GTC apply exclusively to business within the meaning of Section 14 BGB (German Civil Code).

##### **2. Conclusion of contract and scope of order**

2.1 The Contractor's employees are not authorised to make verbal agreements that deviate from written contractual agreements.

2.2 The scope of the order shall be limited to the supplies and services specified in the contract. In particular, the Contractor shall not be obliged to carry out functional tests on components supplied by third parties whose delivery and installation is not the subject matter of the contract.

2.3 The Contractor retains ownership and copyright of cost proposals, drawings, drafts, graphics and other documents and raw materials. Insofar as these rights are due to third parties whom the Contractor uses as subcontractors for the performance of services, their rights shall also be reserved in their favour.

##### **3. Payment**

3.1 All payments shall be made within 10 days of delivery and receipt of invoice or, in the case of services for which acceptance is provided for by law or contract, within 10 days of acceptance and receipt of invoice. In the event of default in acceptance, the aforementioned payment period shall commence upon receipt of the notice of availability and



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the invoice. Discounts and other reductions shall not be granted unless expressly agreed otherwise.

- 3.2 In the event of justified partial deliveries or partial services, the Contractor shall be entitled to corresponding partial invoices.
- 3.3 If the Client defaults on payment, interest on arrears shall be charged at a rate of 9 percentage points above the base rate. Further claims of the Contractor remain unaffected.
- 3.4 If, after the conclusion of the contract, the Contractor becomes aware of circumstances which indicate that the fulfilment of the payment obligation is at risk due to the Client's lack of ability to pay, the Contractor shall be entitled to perform outstanding deliveries and services only against advance payment or the provision of security or to withdraw from the contract after the expiry of a reasonable grace period while maintaining its claims for reimbursement of expenses.
- 3.5 The assertion of rights of retention and offsetting with counterclaims by the Client are only permissible insofar as the Client's counterclaims have been legally established, recognised by the Contractor or are undisputed. This restriction does not apply to counterclaims of the Client due to defects or due to partial non-fulfilment of the contract, insofar as these are based on the same contractual relationship as the claim of the Contractor.
- 3.6 Payments by the Client shall in any case be settled in the order specified in Section 366 (2) BGB.

#### **4. Delivery and service period**

- 4.1 Unless otherwise stated, delivery and service periods shall commence upon conclusion of the contract, but not before the Client has provided the documents, approvals and releases to be procured by the Client or the Client has performed any other necessary acts of cooperation.
- 4.2 In the event of force majeure, e.g. riot, strike, lawful lockout or the occurrence of other unforeseen obstacles which are beyond the Contractor's control and which prevent the Contractor from rendering the service in due time, the delivery or service period shall be extended appropriately, even if the obstacles have arisen during an already existing delay. The Contractor shall notify the Client of the occurrence of the impediment immediately after becoming aware of it. If the impediment lasts for more than three months, each of the parties shall be entitled to withdraw from the contract.



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- 4.3 If the Contractor is in default with the delivery or service due to slight negligence, the liability for damage caused by delay (compensation in addition to the service) is limited to 5% of the net price of the delivery or service that was not provided on time due to the delay. Liability for injury to life, limb and health shall remain unaffected. Liability for damages in lieu of service shall be determined in accordance with the general liability provision in Article 5 of this Section I.
- 4.4 If the Client delays the delivery or service by failing to perform the required cooperative acts, e.g. the delivery of installation, modification and removal items, if it does not accept the delivery item or if it does not fulfil its payment obligations, the Contractor may – after setting a reasonable grace period, unless such grace period is dispensable under the statutory provisions – withdraw from the contract and claim damages for non-performance under the statutory conditions. For purchase contracts, the provision in Section II Article 2.3 shall also apply.

## **5. Liability**

- 5.1 Subject to the following provisions, the Contractor shall be liable in accordance with the statutory provisions insofar as the Client asserts claims for damages based on intent or gross negligence, including intent or gross negligence on the part of the legal representatives, employees or other vicarious agents or a culpable breach of a material contractual obligation. Material contractual obligations are those whose fulfilment is necessary to achieve the purpose of the contract and on whose fulfilment the Client regularly relies and may rely. The liability for damages in the aforementioned cases is limited to the foreseeable, typically occurring damage, insofar as the Contractor, its legal representatives, employees or other vicarious agents cannot be charged with intent or gross negligence.
- 5.2 Liability for culpable injury to life, limb or health remains unaffected; this also applies to mandatory liability under the German Product Liability Act.
- 5.3 Unless otherwise provided above, liability for damages is excluded regardless of the legal nature of the asserted claim. For liability due to delay, the limitation of liability pursuant to Article 4.3 of this section shall apply in addition.
- 5.4 The above provisions shall apply mutatis mutandis insofar as the Client demands reimbursement of futile expenses instead of a claim for damages in lieu of service.



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5.5 Insofar as the Contractor's liability for damages is excluded or limited, this shall also apply with regard to the personal liability for damages of the Contractor's legal representatives, employees and vicarious agents.

## **6. Jurisdiction and applicable law**

6.1 If the Client is a merchant, a legal entity under public law or a special fund under public law, the courts at the Contractor's registered office shall have jurisdiction for all disputes arising from and in connection with the contract. This place of jurisdiction shall apply exclusively for the Client. Alternatively, the Contractor shall be entitled to bring an action against the Client at the Client's registered office.

6.2 Exclusively the laws of the Federal Republic of Germany apply to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.

## **7. Transfer of rights and obligations of the Client**

Transfers of rights and obligations under the contract shall require the Contractor's prior written consent to be effective.

## **8. Ineffectiveness of a provision**

If one or more provisions of these terms and conditions is or becomes invalid, this shall not affect the validity of the other provisions.

## **II.**

### **Special conditions for the sale and delivery**

If the subject matter of the contract is the sale of motor vehicles, bodies or spare parts, the following provisions shall apply in addition to the provisions of Section I.

#### **1. Subject to changes**

The Contractor reserves the right to make changes with regard to design, material and execution, provided that this does not impair the usability of the delivery item or reduce its value.

#### **2. Delivery**

2.1 Deliveries are made ex works. The risk of accidental loss or accidental deterioration shall pass to the Client upon handover of the delivery item to the Client or the commissioned carrier. If the Contractor has taken over the transport, the risk shall pass to the Client at



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the beginning of the loading activity. If the Client is in default of acceptance, the risk shall pass to the Client upon the occurrence of the default of acceptance.

- 2.2 The delivery period shall be deemed to have been complied with if the delivery item has left the Contractor's works or the Client has been notified that the delivery item is ready for dispatch by the expiry of the delivery period.
- 2.3 After exceeding a non-binding delivery date, the Client may request the Contractor in writing to deliver within a reasonable period of time. After the fruitless expiry of this grace period, the Contractor shall be in default. The Contractor shall not be in default as long as the Client does not fulfil the contractual obligations incumbent upon him/her. Further legal claims remain unaffected.
- 2.4 Partial deliveries are permissible insofar as they are reasonable for the Client.
- 2.5 If the Client is in default of acceptance of the object of purchase, it shall bear the storage costs incurred for storage with third parties during the default of acceptance. If storage takes place at the Contractor's premises, the Client shall pay the customary local storage fee. Further legal claims and rights of the Contractor remain unaffected.
- 2.6 If the Contractor withdraws from the contract due to the Client's default in acceptance under the conditions set out in Section I Article 4.4, the Contractor may claim damages in lieu of service in the amount of 15% of the net purchase price. The Client reserves the right to prove that the Contractor has incurred no damage or significantly less damage. The Client reserves the right to claim higher damages to be proven. There shall be no claim for damages if the Client proves that it is not responsible for the breach of its contractual obligations. Further legal claims in the event of default of acceptance shall remain unaffected.

### **3. Purchase price**

The purchase price is ex works from the manufacturer. Value added tax at the statutory rate applicable at the time of delivery shall be charged in addition, insofar as it is incurred. Costs of packaging, freight, insurance, customs and other expenses shall be borne by the Client.

### **4. Reservation of title**

- 4.1 The Contractor retains ownership of all delivery items until full payment of all claims to which he/she is entitled from the business relations with the Client. In the case of a current account, the entire reserved property serves as security for the balance claim.



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- 4.2 The Client may neither pledge the delivery item nor assign it as collateral. In the event of seizure as well as confiscation or other disposition by third parties, he/she shall immediately notify the Contractor by registered letter and bear the costs of measures to remedy the interference, in particular intervention proceedings, if they cannot be recovered from the other party.
- 4.3 The Client is entitled to resell the delivery items subject to retention of title in the ordinary course of business. The Client's claims arising from the resale or disposal of the reserved goods are hereby assigned to the Contractor, irrespective of whether the reserved goods are resold or disposed of without or after processing and whether they are resold or disposed of to one or more customers. The Client shall remain authorised to collect the claim in addition to the Contractor. The Contractor undertakes not to collect the claim as long as the Client meets its payment obligations towards it and no insolvency petition is filed against its assets. The assignment shall only be made on account of performance. The Contractor shall be free to enforce its claim for payment against the Client without making use of the security.
- 4.4 If the delivery item is combined with another item of the Client to form a new, uniform item, the Contractor shall be entitled to co-ownership of the new item in the ratio of the value of the delivery item to the invoice value of the other item. If the Client acquires sole ownership of the new item in accordance with statutory provisions, the Contractor and the Client agree that the Client shall grant the Contractor co-ownership of the new item in the ratio of the value of the combined delivery item to the invoice value of the other item. In the event of conduct in breach of contract on the part of the Client, in particular in the event of default in payment, the Contractor shall be entitled to withdraw from the contract under the statutory conditions and the Client shall be obliged to surrender the goods. All costs arising from the redemption shall be borne by the Client.
- 4.5 If the value of the securities existing for the Contractor and its group of companies exceeds the claims against the Client by more than 10%, the Contractor shall be obliged to release securities of its own choice to this extent at the Client's request.

## **5. Liability for defects in the delivery**

- 5.1 The assertion of a warranty claim requires that the Client inspect the goods immediately after delivery by the seller, insofar as this is feasible in the ordinary course of business, and, if a defect becomes apparent, to notify the seller immediately. If the purchaser does not comply with this obligation, the goods shall be deemed to have been approved, unless the defect was not apparent to the inspection. If such a hidden defect becomes apparent at a later date, the buyer shall be obliged to report it immediately after dis-



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covery. Otherwise, the goods shall also be deemed approved in this case. The notification of defects must be made in text form. Warranty claims based on fraudulently concealed defects remain unaffected.

- 5.2 No liability is accepted for damage due to natural wear and tear. No warranty is given for damage caused by improper handling, e.g. by unsuitable use, non-observance of the operating and maintenance instructions, by faulty assembly or commissioning, by faulty repair, by excessive stress or by the use of unsuitable operating equipment and materials.
- 5.3 Delivered items, even if they have insignificant defects, shall be accepted by the Client without prejudice to the rights to which he/she is entitled in accordance with the following paragraphs.
- 5.4 If the delivery item is defective, the Client shall be entitled – subject to the proper fulfilment of the obligations pursuant to Article 5.1 of this Section – to demand subsequent performance, which shall be effected at the Contractor's discretion by repair of the delivery item or subsequent delivery. The place for the execution of the repair shall be determined by the Contractor while safeguarding the interests of the Client. The place for the execution of the repair shall be determined by the Contractor while safeguarding the interests of the Client. The costs of shipping (standard shipping) and the reasonable costs of assembly shall be borne by the Contractor. The reimbursement of assembly costs shall be subject to the condition that the assembly is carried out by the Contractor or by an approved workshop of the Contractor. Only parts with defects and parts inevitably damaged by these defects despite proper handling of the delivery item shall be replaced. Replaced parts shall become the property of the Contractor.
- 5.5 After consultation with the Contractor, the Client shall give the Contractor the necessary time and opportunity to carry out all repairs and spare parts deliveries which appear necessary to the Contractor at its reasonable discretion. Only in the event of a risk to operational safety of which the Contractor must be informed immediately, or if the Contractor is in default with the rectification of the defect, shall the Client have the right to rectify the defect itself or have it rectified by third parties and to demand reimbursement of the reasonable costs from the Contractor.
- 5.6 If the supplementary performance fails, is impossible or unreasonable or is refused by the Contractor, the Client is entitled to reduce the purchase price or to withdraw from the contract under the statutory conditions. Claims for damages shall only exist according to the measure of the liability regulation in Section I Article 5.



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- 5.7 If it turns out that there was no defect, the Contractor may demand reimbursement from the Client of the costs arising from the unjustified request to remedy the defect, unless the lack of defectiveness was not recognisable to the Client.
- 5.8 The statutory provisions shall apply to the limitation of warranty claims.
- 5.9 In the event of a sale of used items, the warranty is excluded. Claims for damages due to injury to body, life or health as well as claims for damages due to intent or gross negligence shall remain unaffected.

### III.

#### **Special conditions for maintenance, repair and overhaul work as well as other work services**

If the subject matter of the contract is maintenance services, repair services, overhaul services or other work services, the following provisions shall apply in addition to the provisions of Section I.

#### **1. Obligation to co-operate on the part of the Client**

- 1.1 The Client shall provide the Contractor with the vehicle or other object on which the services are to be performed (hereinafter uniformly referred to as the "object of the order"), in good time at the agreed location.
- 1.2 Insofar as services are to be provided at the Client's registered office, the Client shall provide the Contractor with a suitable place for the provision of services and grant unrestricted, secure access to the object of the order.

#### **2. Collection and acceptance**

- 2.1 If the services are performed at the Contractor's registered office or at a workshop designated by the Contractor, the Client shall collect the object of the order without delay, but at the latest within five working days of receipt of the notice of completion. If the Client does not fulfil his/her obligation to collect the goods within the aforementioned period, he/she shall be in default of acceptance. In this case, the Contractor is entitled to charge the customary local costs for storage. Further claims due to default of acceptance remain unaffected.
- 2.2 The Client undertakes to accept the services in accordance with the contract. If the services are performed at the Contractor's registered office or at a workshop designated by him/her, acceptance shall take place there upon collection of the object of the order. The acceptance cannot be denied due to unessential defects. If the acceptance does





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not take place within the time limit specified in Article 2.1 and if the Client has not refused acceptance within the time limit with substantiated indication of defects, the services shall be deemed to have been accepted.

### **3. Liability for defective work services**

3.1 If the service provided is defective, the Contractor shall be obliged to provide subsequent performance. If subsequent performance is refused, is not possible or not reasonable or fails, the customer is entitled to a reasonable reduction of the remuneration or to withdraw from the contract. Claims for damages exist only within the scope of the liability regulation according to Section I Article 5.

3.2 The statutory provisions shall apply to the limitation of warranty claims.

### **4. Extended lien and retention of title**

4.1 The Contractor shall be entitled to a contractual lien on the items that have come into its possession as a result of the order on account of its claim arising from a repair or maintenance order. The contractual lien may also be asserted on account of outstanding claims from previous orders, insofar as they are connected with the object of the order. For other claims, the contractual right of lien shall only apply insofar as these are undisputed or a legally binding title exists and the object of the order is the property of the Client.

4.2 Insofar as parts installed in the course of the repair or maintenance order have not become essential components of the object of the order, the Contractor shall retain title thereto until full payment of the outstanding remuneration claims arising from the order.

#### **Wietmarscher Ambulanz- und Sonderfahrzeug GmbH**

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