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Wietmarscher Ambulanz- und Sonderfahrzeug GmbH (WAS)

General terms and conditions of WAS

- Status 03/2023 -

I.

General terms and conditions

1. Scope of application

1.1 These General Terms and Conditions (hereinafter referred to as "GTC") shall apply exclusively to all contracts of Wietmarscher Ambulanz- und Sonderfahrzeug GmbH, Darwinstr. 11, 48488 Emsbüren (hereinafter referred to as "Contractor") with business partners (hereinafter referred to as "Client") concerning deliveries and services of the Contractor.

1.2 The GTC shall also apply to future business relations with the Client without the need for a renewed reference to the GTC. The GTC shall apply even if they are no longer expressly agreed, in particular also if the Contractor provides deliveries or services to the Client without reservation in the knowledge that the Client's general terms and conditions are contrary to or deviate from or exceed the GTC.

1.3 Conflicting, additional or other deviating conditions of a client shall not become part of the contract, even if they are not expressly objected to. Such terms and conditions of the Client shall only apply if they are confirmed in writing (whereby written form within the meaning of the GTC always means written form in accordance with § 126 BGB) by the Contractor. The written form requirement can only be waived by written agreement.

1.4 The GTC apply exclusively to clients who are entrepreneurs within the meaning of § 14 BGB (German Civil Code), legal entities under public law or special funds under public law.

2. Conclusion of contract and scope of order

2.1 The contractor's offers are subject to change. Orders shall be deemed accepted when they have been confirmed by the contractor in writing or in text form or when they have been complied with by sending the goods or providing the service. Verbal agreements made prior to the conclusion of the contract are invalid. Verbal amendments and supplements to the contract shall only be effective after written confirmation. The Contractor's employees are not authorised to make verbal agreements that deviate from written or textual contractual agreements.

2.2 The scope of the order is limited to the deliveries and services specified in the contract. In particular, the Contractor is not 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 employs 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 receipt of the goods and 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. Discounts and other reductions shall not be granted unless expressly agreed otherwise in writing. Payments shall be made exclusively by SEPA bank transfer, Girocard or direct debit.

3.2 The contractor is entitled to make partial deliveries or provide partial services if this is reasonable for the client, in particular if the partial delivery or partial service is usable for the client within the scope of the contractual purpose, the delivery of the remaining ordered goods is ensured and the client does not incur any significant additional expenditure or additional costs as a result (unless the contractor agrees to bear these costs). 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 is entitled - insofar as there is no disproportionality within the meaning of Section 320 (2) of the German Civil Code (BGB) - to carry out 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 by the Client are only permissible insofar as the Client's counterclaims have been legally established, have been acknowledged by the Contractor or are undisputed or are in a reciprocal relationship with a claim of the Contractor within the meaning of § 320 BGB.

3.6 Payments by the Client shall in any case be settled in the order specified in Section 366 (2) of the German Civil Code (BGB).

4. Delivery and performance time, quality deviations

4.1 Delivery and performance deadlines are non-binding and, unless otherwise stated, 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. If a party is temporarily prevented from performing due to force majeure (e.g. industrial disputes, operational disruptions due to fire, water or comparable external circumstances, war or terrorist conflicts, natural disasters, diseases, epidemics, pandemics, official measures and other unforeseeable, extraordinary events for which the respective party is not responsible), the mutual performance obligations shall be suspended for this period and neither party shall be in default. If the performance of one or both parties is delayed by more than four months as a result, both the contractor and the client are entitled to withdraw from or terminate the respective contract. The party affected in each case shall be obliged to inform the other party without delay

as soon as circumstances exist which may constitute a case of force majeure in accordance with sentence 1. Statutory rights of withdrawal and any claims under Section 645 of the German Civil Code (BGB) shall remain unaffected.

4.3 In the case of customary, technically unavoidable deviations in quality which do not or only insignificantly reduce the suitability for use, the client shall not be entitled to any warranty rights. The same applies to deviations, in particular in dimensions, weights, performance data or colour shades, which are within the scope of applicable DIN standards or tolerances customary in the industry. Likewise excluded are warranty claims of the Client for defects that are not due to the fault of the Contractor, such as, for example, natural wear and tear, improper use or handling of the goods, excessive stress, incorrect operation, assembly or commissioning by the Client or third parties, improper maintenance, wear and tear, use of unsuitable operating materials, modifications, repairs or maintenance without the consent of the Contractor or if the Client does not give the Contractor the necessary time and opportunity for maintenance.

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 objects, if it does not accept the contractual object or if it does not fulfil its payment obligations, the Contractor may - after setting a reasonable grace period, unless such grace period is dispensable according to the statutory provisions - withdraw from the contract and claim damages for non-performance under the statutory conditio

4.5 In the cases of item 4.4 above, the contractor shall be entitled, after setting a reasonable grace period, insofar as such is not dispensable according to the statutory provisions, to demand lump-sum damages in the amount of 10 % of the net purchase price. The Client reserves the right to prove that the Contractor has suffered no or less damage. The contractor reserves the right to assert a higher damage to be proven by him. There shall be no claim for damages if the Client proves that he is not responsible for the breach of his contractual obligations. Further statutory claims in the event of default of acceptance shall remain unaffected. However, the liquidated damages shall be offset against other claims for damages of the contractor.

5. Liability

5.1 The Contractor shall be liable in accordance with the statutory provisions, insofar as and to the extent that nothing to the contrary results from these GTC including the following provisions.

The Contractor shall have unlimited liability for damages - irrespective of the legal grounds - within the scope of fault-based liability in the event of intent and gross negligence, including intent and gross negligence on the part of legal representatives, employees or other vicarious agents.

5.2 In the event of simple negligence, the contractor, including simple negligence of the legal representatives, employees or other vicarious agents, shall only be liable in the event of a culpable breach of a material contractual obligation. Material contractual obligations are those whose fulfilment makes the proper performance of the contract possible in the first place and on whose compliance the Client regularly relies and may rely.

5.3 The liability for damages in these cases of simple negligent breach of an essential contractual obligation is limited to the foreseeable, typically occurring damage, insofar as and to the extent

that the contractor, its legal representatives, employees or other vicarious agents are not to be charged with intent or gross negligence. The contractor shall then in particular not be liable for lost profit of the client and not for foreseeable indirect consequential damages (such as financial losses, contractual penalties, business interruptions or loss of production).

5.4 If the contractor is in default of delivery or performance due to simple negligence, the liability for damages caused by default shall be limited to a maximum of 5 % of the net price of the respective delivery or performance that was not provided on time due to the default.

5.5 The exclusions and limitations of liability in this clause 5 shall not apply in the event of culpable injury to life, limb or health, in the event of the assumption of a guarantee and in the event of mandatory statutory liability such as under the Product Liability Act.

5.6 Unless otherwise provided for in this Clause 5, liability for damages shall be excluded irrespective of the legal nature of the claim asserted.

5.7 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 performance.

5.8 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 other vicarious agents.

6. Jurisdiction and applicable law

6.1 For all disputes arising from and in connection with the specific legal relationship in which these GTC are included, the courts at the Contractor's registered office shall have exclusive jurisdiction, unless mandatory statutory provisions provide otherwise. Alternatively, the Contractor is also entitled to bring an action against the Client at the Client's registered office.

6.2 The law of the Federal Republic of Germany shall apply exclusively, to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

7. Transfers of rights and obligations of the principal

Transfers of rights and obligations of the Client arising from the specific legal relationship in which these GTC are included require the prior written consent of the Contractor in order to be effective. The provision of § 354a HGB remains unaffected.

II.

Special Conditions for Purchase Contracts and Contracts for Work and Services

If the contract is a contract of sale or a contract for work and materials, the following provisions shall apply in addition to the provisions of section I.

1. Subject to change

The Contractor reserves the right to make changes with regard to design, material and execution insofar as this is reasonable for the Client, taking into account the interests of the Contractor,

and insofar as this does not impair the usability of the delivery item and does not result in a reduction in value.

2. Delivery

2.1 Delivery shall be ex works (EXW Incoterms 2020). The risk of accidental loss or accidental deterioration shall pass to the Client when the delivery item is made available at the place agreed with the Client and the Client is notified accordingly. If the contractor has exceptionally taken over the transport, the risk shall pass to the principal at 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, in the case of delivery ex works, the delivery item has been made available for collection at the location agreed with the Client and the Client has been notified of this or, in the case of acceptance of transport, the loading activity has commenced by the expiry of the delivery period.

2.3 After exceeding a non-binding delivery date, the Client may request the Contractor in writing (§ 126 BGB) to deliver within a reasonable period of time. After 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. Further legal claims remain unaffected.

2.4 If the Client defaults on acceptance of the subject matter of the contract, the Contractor shall be entitled to charge the customary local costs for storage. The customary local costs shall be EUR 20 plus VAT per calendar day. The Client reserves the right to prove that the costs for storage were lower or not incurred at all. The Contractor reserves the right to assert higher costs to be proven by him. There shall be no claim if the Client proves that he is not responsible for the breach of duty. Further legal claims and rights of the contractor remain unaffected. However, the lump-sum costs shall be offset against other claims for damages of the contractor.

3. Purchase price

The purchase price shall be ex works of the Contractor. 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 customer.

4. Retention of title

4.1 The contractor retains ownership of all contractual items until full payment of all claims to which he is entitled from the business relations with the client. In the case of a current account, the entire reserved property shall serve as security for the balance claim.

4.2 The client may neither pledge the delivery item nor assign it as security. In the event of seizure or confiscation or other access by third parties, he shall draw attention to the Contractor's ownership, notify the Contractor in writing without delay and bear the costs of measures to remedy the encroachment.

4.3 The Client shall be entitled to process the goods subject to retention of title in the ordinary course of business. In this case, it is agreed that the further treatment and processing shall be carried out in the name of the contractor as manufacturer and that the contractor shall acquire direct ownership or - if the further treatment or processing is carried out from materials of several owners or the value of the processed item is higher than the value of the reserved goods - co-ownership (fractional ownership) of the newly created item in the ratio of the value of the reserved goods to the value of the newly created item. The ratio of the gross invoice value of the reserved goods to the invoice value of the other materials used shall be decisive for the calculation of the value. In the event that no such acquisition of ownership should occur for the contractor, the client already now transfers its future ownership or - in the above-mentioned ratio - co-ownership of the newly created item to the contractor as security. If the reserved goods are combined or inseparably mixed with other items to form a uniform item and if one of the other items is to be regarded as the main item, the contractor shall, insofar as the main item belongs to the contractor, transfer to the client pro rata co-ownership of the uniform item in the aforementioned proportion.

4.4 Furthermore, the Client is entitled to resell the contractual items subject to retention of title in the ordinary course of business as long as he is not in default with the payment of a claim arising from the business relationship with the Contractor. The authorisation to resell shall not apply if there is a prohibition of assignment in the relationship between the Client and its customer.

4.5 The Customer's claims arising from the further processing, resale or sale of the reserved goods are hereby assigned to the Contractor, irrespective of whether the reserved goods are resold or resold to one or more customers. In the event of processing, combination and mixing of the reserved goods with objects of third parties, the assignment shall be limited to the amount of the payment claim from delivered reserved goods of the contractor in the ratio of the rights of the contractor to the rights of involved third parties in accordance with the above provision in section II clause 4.3.

4.6 The Client is authorised, revocable at any time, to collect the claims assigned to the Contractor for the Contractor's account in its own name. The Client is obliged to inform the Contractor upon request of the amount of the claim as well as other details, the reason for the claim and the names of the debtors as well as to hand over all documents required for collection. The contractor undertakes not to collect the claim himself as long as the client meets his payment obligations towards him and no insolvency petition is filed against his 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.

4.7 The right to resell, process, mix or combine expires with the opening of insolvency proceedings against the assets of the client.

4.8 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 repossession shall be borne by the Client.

4.9 The Contractor undertakes to release the securities to which the Contractor is entitled at the request of the Client to the extent that the realisable value of the securities exceeds the claims

against the Client to be secured by more than 10%; the Contractor shall be responsible for selecting the securities to be released.

5. Liability for defects in the delivery

5.1 The assertion of a warranty claim requires that the client inspects the goods immediately after receipt, insofar as this is feasible in the ordinary course of business, and, if a defect becomes apparent, notifies the contractor immediately. If the principal does not comply with this obligation, the goods shall be deemed to have been approved, unless the defect was not recognisable during the inspection. If such a hidden defect becomes apparent at a later date, the customer shall be obliged to notify the contractor of this immediately after discovery. Otherwise, the goods shall be deemed to have been approved in this case as well. The notification of defects must be made in text form. Warranty claims based on fraudulently concealed defects shall remain unaffected.

5.2 Items, even if they have insignificant defects, are to be received by the principal without prejudice to the rights to which he is entitled in accordance with the following paragraphs.

5.3 If the delivery item is defective, the Client shall be entitled - subject to the proper fulfilment of the obligations pursuant to section 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.

5.4 The place where the repair is to be carried out shall be determined by the contractor, taking into account the interests of the client. If there is a defect and if parts of the delivery item are replaced, the Client shall transfer ownership of the parts to be replaced to the Contractor. The costs of shipping (standard shipping) and the reasonable costs of assembly shall be borne by the contractor. The reimbursement of assembly costs is 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 become the property of the contractor.

5.5 The Client shall give the Contractor the necessary time and opportunity for subsequent performance after consultation with the Contractor. Only if the contractor is in default with the subsequent performance after the client has set a reasonable deadline shall the client have the right to remedy the defect himself or have it remedied by a third party 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. Warranty claims and claims for damages shall only exist in accordance with the liability provision in Section I Clause 5.

5.7 If it turns out that there was no defect, the contractor may demand reimbursement from the client of the costs incurred as a result of the unjustified request to remedy the defect, unless the lack of defectiveness was not recognisable to the client.

5.8 The Client's rights of recourse against the Contractor pursuant to §§ 445a, 478 BGB (recourse of the Contractor) shall only exist insofar as the Client has not entered into an



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agreement with its customer that goes beyond the statutory claims for defects. If only entrepreneurs are involved in the supply chain, including the last purchase contract, the rights of the Client under § 445a BGB against the Contractor shall only exist if the Contractor is at fault in this respect.

5.9 In the event of a sale of used items, the warranty is excluded. Claims for damages due to culpable injury to life, limb or health, due to the assumption of a guarantee, due to mandatory statutory liability such as under the Product Liability Act as well as in the event of gross negligence, intent and/or fraudulent intent shall remain unaffected.

5.10 Claims of the Client due to defects in goods delivered by the Contractor or services rendered by the Contractor - including claims for damages and claims for reimbursement of futile expenses due to such defects - shall become statute-barred within one year from the statutory commencement of the limitation period, unless otherwise provided for in the provisions of this Section II Clause 5.

5.11 If the client or another customer in the supply chain has satisfied claims of its buyer due to defects in newly manufactured goods delivered by the contractor and if the last transaction in the supply chain is a purchase of consumer goods, the limitation period for claims of the client against the contractor under sections 437, 445a para. 1 BGB shall become time-barred at the earliest two months after the point in time at which the principal or the other customer in the supply chain has fulfilled the consumer's claims, unless the principal could have successfully invoked the defence of limitation against its contractual partner. The limitation of the claims of the Client due to defective goods delivered by the Contractor shall in any case occur insofar as the claims of the Client's contractual partner against the Client due to defects of the goods delivered by the Contractor to the Client have become time-barred.

5.12 If the Contractor has provided advice and/or information that is not to be remunerated separately in breach of duty without the Contractor having delivered goods in connection with the information or advice or without the advice or information in breach of duty constituting a material defect pursuant to Section 434 of the German Civil Code (BGB) of the goods delivered by the Contractor, claims against the Contractor based thereon shall become statute-barred within one year from the statutory commencement of the limitation period. Claims of the Client against the Contractor arising from a breach of contractual, pre-contractual or statutory obligations which do not constitute a material defect pursuant to § 434 BGB of the goods to be delivered or delivered by the Contractor shall also become statute-barred within one year from the statutory commencement of the limitation period. Insofar as the aforementioned breaches of duty constitute a material defect pursuant to § 434 BGB of the goods delivered by the contractor in connection with the advice or information, the provisions set out in this Section II Sections 5.10, 5.11 and 5.13 shall apply to the limitation of claims based thereon.

5.13 The provisions set out above in this Section II Clauses 5.10 to 5.12 shall not apply to the limitation of claims based on injury to life, limb or health or to the limitation of claims under the Product Liability Act and based on defects in title of the goods delivered by the Contractor which consist in a right in rem of a third party on the basis of which the surrender of the goods delivered by the Contractor can be demanded. Furthermore, they do not apply to the limitation of claims of the Client based on the fact that the Contractor fraudulently concealed defects in goods delivered by the Contractor or in services rendered by the Contractor or that the Contractor



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intentionally or grossly negligently breached a duty. In these cases, the statutory limitation periods shall apply to the limitation of these claims.

III.

Special conditions for contracts for work and services

If the contract is a contract for work and services, the following provisions shall apply in addition to the provisions of Section I.

1. Cooperation obligations 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 subject matter of the contract.

2. Collection and acceptance

2.1 If the services are performed at the Contractor's place of business or at a workshop designated by him, the Client shall collect the object of the order without delay, but at the latest within one week after receipt of the notice of completion. If the Client does not comply with his obligation to collect within the aforementioned period, he shall be in default of acceptance. In this case, the contractor shall be entitled to charge the customary local costs for storage. The customary local costs shall be EUR 20 plus VAT per calendar day. The Client reserves the right to prove that the costs for storage were lower or not incurred at all. The Contractor reserves the right to assert higher costs to be proven by him. There shall be no claim if the Client proves that he is not responsible for the breach of duty. Further claims due to default of acceptance remain unaffected. However, the lump-sum costs shall be offset against other claims for damages of the contractor.

2.2 The Client undertakes to accept the contractual services. If the services are performed at the Contractor's place of business or at a workshop named by him, acceptance shall take place there upon collection of the object of the order. Acceptance may not be refused due to insignificant defects.

2.3 The subject matter of the contract shall also be deemed to have been accepted if the Client has not refused acceptance within a reasonable period set by the Contractor after completion of the work, stating at least one defect. The reasonable period set by the Contractor in this sense shall be deemed to be the period referred to above in this Section III Clause 2.1.

3. Liability for defective work performance

3.1 For the assertion of a warranty claim, the obligation to give notice of defects pursuant to Section II Clause 5.1 for contracts for work and services shall apply accordingly.



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3. If the service rendered is defective, the Contractor shall - subject to the proper fulfilment of the obligations pursuant to section 3.1 of this section - be obliged to provide subsequent performance. If the subsequent performance is refused by the contractor, if it is not possible or not reasonable or if it fails, the client shall be entitled to a reasonable reduction of the remuneration or to withdraw from the contract under the statutory conditions. Warranty claims and claims for damages shall only exist in accordance with the liability provision in Section I Clause 5.

3.3 The above provisions in Section II Clauses 5.10 to 5.13 shall apply mutatis mutandis to the limitation period.

4. Extended lien and retention of title

4.1 The contractor shall be entitled to a contractual lien on the objects of the order which have come into his possession on the basis of the contract for work because of his claims arising from the contract for work. The contractual lien may also be asserted on account of outstanding claims from earlier contracts for work and services, insofar as these are connected with the subject matter of the contract. The contractual lien shall only apply to other claims arising from the business relationship with the Client insofar as these are undisputed or have been legally established and the object of the order is the property of the Client.

4.2 Insofar as parts installed in the course of the performance of the services have not become essential components of the subject matter of the contract, the Contractor shall retain title thereto until full payment of all claims to which it is entitled from the business relations with the Client. The above provisions in Section II Clauses 4.2 to 4.9 shall apply accordingly.

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