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General Terms and Conditions

(As of June 2016)

- A. Validity of DMS terms and conditions and versions in other languages
- B. Conditions of purchase and contracts
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A. Validity of DMS terms and conditions and versions in other languages

A.1

These terms and conditions apply to all business relations between **DMS** and its contract partners, even when the individual businesses are not specifically referred to in detail in the terms and conditions, if the contract partner is an entrepreneur – a legal entity under public law or a public fund, according to § 14 German Civil Code (hereinafter called BGB).

The contractors referred to in these terms and conditions are those with whom **DMS** carry out supplier and/or customer transactions.

A.2

These terms and conditions apply always, without exception. Differing, conflicting or supplementary general terms and conditions of the contract partner shall only become part of the contract if their validity has been agreed upon in writing by **DMS**.

In individual cases, individual agreements made with the contractor (including side agreements, amendments and modifications) always take precedence over these terms and conditions. A written contract or written confirmation from **DMS** shall be decisive with regards to the content of any such agreement.

A.3

References to the validity of statutory regulations only serve for purpose of clarification. Even without such clarification, the statutory regulations are valid, unless they have been directly modified or expressly excluded in these terms and conditions.

A.4

Different legal systems can give different meanings to the same words. For foreign-language versions (non-German versions of these terms and conditions), the German legal significance of the concerned word or words is always decisive.

B. Purchase and contract terms

B.1 Contract content/assignment prohibition

B.1.01

DMS's purchase and order terms are binding for **DMS** orders placed and purchases made.

B.1.02

All orders placed and purchases made by **DMS** – if these conditions do not answer the question – operate solely according to legal regulations.

B.2 Warranty

DMS's contract partner must grant warranty and damage compensation according to the extent of the law and duration provided by law.

B.3 Place of performance / jurisdiction / governing law.

B.3.01

The **DMS** headquarters is the place of performance and place of payment for both contract parties.

B.3.02

The **DMS** headquarters is the place of jurisdiction for all legal disputes arising from or in connection with the contract relationship between the contract partner and **DMS**.

In the above-mentioned case **DMS** also has the right to take legal action against the contracting party on its respective headquarters.

B.3.03

The laws of the Federal Republic of Germany apply, with exception the UN uniform law, in particular the international sales law (CISG).

C. General terms and conditions of service

C.1 Order confirmation/Scope of services / Change request

C.1.01

The content of a contract is dependent on a written order confirmation from **DMS**, optionally together with specifications compiled by **DMS**. Verbal agreements in connection with the conclusion of contracts that are made with **DMS**

employees who are not authorized to represent the company, likewise require written confirmation from **DMS** to be effective.

C.1.02

The customer has to provide **DMS** with all information and documents necessary or useful for the implementation of the contracted services. When a specification document is created and has been presented to the customer for review and approval, the scope of service for this specification is contractually binding for both parties.

C.1.03

Property information relating to the products and services of **DMS** may only be attributed to **DMS** if the information comes from **DMS**, has been expressly requested from **DMS**, or are expressly authorized by **DMS**, or are public statements, and **DMS** was aware of or should have known this information and had not distanced itself from it within a reasonable time. Authorized dealers and customers of **DMS** who act as a reseller are not considered **DMS's** subsidiaries according to § 434 para. 1 (BGB). A sufficient correction of property information according to § 434 para. 1 (BGB) can be carried out on **DMS's** homepage (www.dms-tec.de) in any case.

C.1.04

DMS owe consulting services only on the basis of a special written agreement subject to a separate fee.

C.1.05

If the customer asks for a contractual change of the service specification, **DMS** will offer a corresponding amendment quotation provided with a commitment period. If the customer accepts the offer, the amendment takes effect by a corresponding order confirmation from **DMS**.

C.2 Permanent rights/Copyright law / Trademark

C.2.01

Designs, drafts, models, layout drawings, MRP's and other drawings, text files, etc. produced by **DMS** remain the intellectual property

of **DMS**, even if the customer has made payment for the work.

The right to realize the further processing of these items and the intellectual performance which they represent remains the exclusive right of **DMS**.

C.2.02

With respect to **DMS**, the customer is responsible that models, drafts, plans, texts, trademarks and so forth, which are forwarded by the customer, shall be used correctly.

C.2.03

DMS has the right to place their trademark or logo in a visible manner. The customer is prohibited from removing such affixed trademarks.

C.3 Delivery/Risk of loss/Access

C.3.01

DMS reserves the right to choose the shipping method, unless a particular shipping method has been specifically designated?

C.3.02

As soon as the products leave the premises of **DMS**, the purchaser shall assume any risk. Any delivery will be insured at the request of the customer only and at his expense.

C.3.03

The risk is transferred to the customer with the transfer of the merchandise to the carrier, both with the notification of the readiness or with the delivery on the agreed delivery date.

C.3.04

If **DMS** has to provide services to the customer or, on the clients' behalf, to a third party according to the agreement, e.g. inventory work, the customer has to make sure that the employees of **DMS** have access to and from the respective sites.

The customer has to pay any latency of **DMS** employees due to entrance barriers.

C.4 Delivery time/Authorization/Deadlines for repair, etc.

Delivery **dates** designate a time, be it a particular day or a calendar week or the like, on which delivery is to be made.

Delivery **time** denotes the time limits within which delivery has to take place.

Delivery **time** is a generic term for delivery dates and deadlines.

C.4.01

Possibly agreed delivery **deadlines** are valid ex works, unless something else has explicitly been agreed upon. Delivery **deadlines** also refer to corresponding service deadlines. Such delivery periods begin with the time listed in the order confirmation, but at the earliest when the documents, approvals, requests and shipment addresses have been provided by the customer, all order details have been clarified and the customer has provided the agreed deposits or securities.

If a delivery **date** has been agreed upon, delivery will be postponed by a reasonable period if the customer is in arrears with its supplying of any documents, approvals, shipping address announcement, deposits or securities.

If a delivery **time** has been agreed upon, it can be extended appropriately if the customer is in arrears with its supplying of any documents, approvals, shipping address, notifications, deposits or securities.

A corresponding postponement of delivery **dates** or extension of delivery **times** shall also occur if the requirements for the services to be provided by **DMS**, which the customer must fulfil himself or through third parties, are not fulfilled in due time.

C.4.02

If approvals which have to be provided by **DMS** and which are required for a timely deliver, are delayed or refused for reasons for which **DMS** is not accountable, **DMS** is not held responsible.

C.4.03

If the customer demands modifications to the order after confirmation of the order, the **period**

of delivery only starts with the confirmation of the modification by **DMS**. The agreed-upon delivery **date** is postponed accordingly.

C.4.04

The delivery **deadline** shall be extended appropriately in the event of unforeseen impediments, which **DMS** is neither able to avert with appropriate care under the circumstances of the case, e.g. a total or partial failure on the part of sub-contractors, for which **DMS** is not responsible. In such a case, **DMS** can withdraw from the contract.

C.4.05

In cases in which, in the scope of repairs, warranty work, subsequent deliveries and similar matters cannot be made with standard components because in compliance with the agreement, a customized design is involved or because special components were installed, the corresponding performance time granted to **DMS** shall be extended by the time required for procurement of the corresponding components (in the event of order in good time.)

C.4.06

The statutory provisions shall govern admission of delayed delivery from **DMS**. However, in every case, a reminder by the customer is required.

C.4.07

If there is a delay of delivery on the part of **DMS**, the customer can demand flat rate compensation for delay damages. The lump-sum compensation amounts to .5% of the net price (delivery value) each calendar week up to a maximum of 5% of the delivery value of the delayed goods. **DMS** has the right to verify that the customer has not been damaged or damaged substantially less than the above-mentioned sum.

C.4.08

Customer rights according to clause C.10.02 in these general terms and conditions, and **DMS**'s legal rights, particularly in the exclusion of obligation (for example, due to impossibility or unreasonableness of the service or subsequent service) remain unaffected.

C.5 Part shipments, overages or shortages

C.5.01

For deliveries of uncountable goods **DMS** is entitled to deliver up to 10% more or less than the ordered quantity, without it being considered a failure to discharge its responsibilities.

We are entitled to make partial delivery that is deemed acceptable to the customer.

C.5.02

If **DMS** exercises the right to partial delivery, short delivery or excess delivery, the customer is not allowed to keep back payment for this reason.

C.6 Prices

C.6.01

The prices apply to F.O.B factory **excluding** packaging if nothing different is stipulated in the order confirmation.

C.6.02

As far as packaging applies, **DMS** packs according to the current regulations and proceeds according to § 4 VerpackV.

C.6.03

Prices and costs are net and exclusive of value added tax applicable at the time.

C.6.04

For billing on a Time & Material basis, time and materials used by **DMS** are recorded consecutively and billed on a monthly basis. **DMS's** records are decisive. The customer has until the end of the month to claim specific reservations against the monthly payoff. Otherwise there exists the refutable presumption, that the billed times and materials were actually incurred.

C.7 Payment terms

C.7.01

The legal requirements relating to the Turnover Tax are applicable to down payments.

C.7.02

Unless otherwise agreed, payments are due immediately.

C.7.03

Payments to be made to **DMS** are due 10 days after invoice date at the latest. Upon exceeding this date the payer is in payment arrears.

C.7.04

The place of performance for payments is the **DMS** headquarters.

C.7.05

The customer may only set off claims that are undisputed or are final and absolute.

C.7.07

The customer shall have no right of retention, except in cases of C.7.05.

However, the rights under § 320 (BGB) are preserved unless and until **DMS** has not met its obligations concerning warranty.

C.7.08

If severe financial problems occur with a customer after conclusion of contract - if a declaration of intent of the customer is required to conclude the contract, after the last declaration of intent directed to the conclusion of the contract of **DMS**, **DMS** is authorized to claim for any outstanding performances and deliveries from the same contract or the same legal relationship (§ 273 BGB), demand advance payment or provision of a security according to the choice of **DMS**. If the customer does not meet this demand, **DMS** may cancel the named contracts and claim damage compensation instead of performance after setting a deadline. The compensation amount will be 25% of the non-performed order sum without any special proof, unless the customer proves lesser damages.

DMS can seek compensation for the loss in excess of that flat rate only if there is a damage on an exceptional scale, wherein the lump sum is to be added to this claim.

C.8 Obligation of inspection and notification

C.8.01

Deliveries of **DMS**, including drafts, execution plans, proposals on projects etc., always have

to be checked for their propriety immediately upon delivery of the goods.

C.8.02

Obvious defects must be immediately reported in writing to **DMS**, stating the actual complaints, at the latest within 12 days of arrival at its destination.

C.8.03

The customer must report any hidden defects as soon as they are discovered and no later than 12 days after the discovery of the defect in the prescribed form.

C.9. Warranty

Warranty in these terms and conditions means: Claims for poor performance due to delivery of a defective item.

C.9.01

Special legal regulations in the final delivery of the item to a customer remain untouched by the limitation of liability in this clause **C.9.** (Supplier recourse acc. §§ 478, 479 BGB).

C.9.02

If the customer doesn't follow the rules in clause C.8 concerning inspection and claim, **DMS** is not liable for the reported defect.

C.9.03

The general limitation period for claims based on material and legal defects is **12 months** from date of delivery, or if purchase has been agreed upon, from date of purchase.

This does not affect the statutory provision related to limitation periods (in particular § 438 dir.1.1 and 1.2 and dir. 3 §§444,479 – BGB).

C.9.04

The 12-month warranty period also applies to contractual and non-contractual damage claims for damages based on a defect in the item.

The following limitations do not apply:

- If the damage was caused by intent or gross negligence from **DMS** or their representatives;

- Damages resulting from injury to life, limb and/or health;
- By delay, if a fixed delivery deadline had been agreed upon;
- By fraudulent concealment of defect;
- With provision of a guarantee and/or the procurement or manufacturer risk in the sense of § 276 (BGB) by **DMS**;
- In cases of binding legal liability, in particular under the Product Liability Act.

A reverse burden of proof to the detriment of the customer is not connected with the above provisions.

C.9.05

As far as the warranty period is inhibited or interrupted by works of **DMS**, this inhibition or interruption extends only to the functional unit affected by the replacement delivery or rework activity.

C.9.06

In the event that the customer has a right to supplementary performance, **DMS** may first decide whether the supplementary performance will occur by eliminating the defect (repair) or by delivering a defect-free item (replacement). The right to refuse supplementary performance under the statutory prerequisites shall remain untouched.

C.9.07

No warranty is given for damages that are not attributable to **DMS**. This shall for example include damage arising for the following reasons: unsuitable or inappropriate use, defective assembly, incorrect installation and/or putting into service by the customer or a third party, natural wear, improper or careless handling, excessive use, unsuitable components or parts or replacement materials, inadequate construction works, unsuitable foundations, chemical, electromagnetic, electrochemical or electrical influences,

provided they are not attributable to the fault of **DMS**.

C.9.08

No guarantee is extended by **DMS** to components provided or supplied by the customer.

The customer alone is responsible for or the suitability and material characteristics of such components, unless explicitly agreed otherwise.

C.9.09

In case of non-observance of directions for operation and maintenance by the customer it is assumed that the caused failure can be attributed to it. In this case the customer is obligated to demonstrate and prove the opposite.

C.9.10

DMS reserves the right to demand that the customer pays the purchase price due before doing the supplementary work. However, the customer is entitled to retain a reasonable part of the purchase prices in relation to the defect.

C.9.11

Any works on objects delivered by **DMS** or other performances made by **DMS** are to be understood as works for repair of defaults or amendments,

- **as far as** the defect is explicitly recognized by **DMS**
- **or as far as** notices of defects are proven
- **and as far as** the proven notice of defects are justified.

Without these conditions such works is to be understood as special performance.

C.9.12

In addition, repairs or replacement delivery by **DMS** is understood as special performance, if they are not explicitly affected by the acknowledgement of a legal obligation.

C.9.13

As a rule, that which is necessary for the purpose of examination and supplementary performance, in particular transport, travel, labour and material costs (not removal and installation costs) carried by **DMS**, if indeed there is a de-

fect. Otherwise **DMS** can demand compensation from customers for the costs incurred for the unauthorized removal of defects (in particular testing and transportation costs), unless the lack of deficiency was not apparent to the customer.

In the case that facilities and machines delivered by **DMS** are placed or operated outside the headquarters of the customer, even though the contract in question was finalized with a branch of the customer located in Germany, the customer will be responsible for the additional costs, travel expenses or other costs that may arise because of eventual warranty measures, transport costs, travel costs and other expenses, e.g. travel that crosses the German border.

C.9.14

The customer must give **DMS** the necessary time and opportunity to perform owed warranty repairs and replacement deliveries. The customer has the right to rectify a defect themselves or by a third party and demand compensation from **DMS** for the costs ONLY in urgent cases of danger to operational safety and to prevent excessive damage, when communicated immediately – before, if possible – with **DMS**, or when there is a delay on the part of **DMS** for the rectification of a defect.

C.9.15

In cases where **DMS** provides third-party services on behalf of the customer, only the third party is responsible for the warranty. Unless otherwise agreed upon, **DMS** does not give any advice to the customer regarding choice of third-party service. If the customer requests such consultation, it is provided only on the basis of a special separate agreement, at the customer's expense.

C.9.16

If the supplementary performance has failed, or has exceeded the reasonable deadline without success (§ 323 para. 1 and § 281 para. 1 - BGB), or is deemed unnecessary according to the statutory provisions (§ 323 para. 2 and § 281 para. 2 - BGB), or if **DMS** refuses the supplementary performance according to § 439

para. 3 (BGB), or the chosen performance is unreasonable for the customer, the customer may withdraw from the contract. In the case of a minor defect, however, the customer has no right of withdrawal.

C.9.17

The right to demand an appropriate reduction in price, a decrease shall only be granted to the customer if **DMS** agrees.

C.9.18

Customer damage claims or compensation for wasted expenses are excluded in case of defects in accordance with clause C.10.01 and exist only in the cases of clause C.10.02.

C.10 Other liability

C.10.01

Unless otherwise specified in these terms and conditions, damage and expense claims from the customer are subject to the following clause (C.10.02), regardless of the legal reason against DMS. This is especially true for claims for damages in tort (e.g. § 823 - BGB).

As far as liability is excluded or limited, this also applies to the personal liability of employees, workers, staff, representatives and assistants from DMS.

C.10.02

The limitations of liability these General Terms and Conditions are not applied

- If the damage was caused by intent or gross negligence from **DMS** or their representatives;
- in case of breach of any contractual obligations, whereby the compensation is limited to typical damages which could be foreseen upon conclusion of contract. Essential contractual duties are duties safeguarding essential contractual legal positions of the contracting party, which the contract has to grant according to its content and purpose; essential

duties are contractual obligations which enable the fulfilment of the proper execution of the contract in the first place, and on which the customer has regularly relies and may rely;

- Damages resulting from injury to life, limb and/or health;
- By delay, if a fixed delivery deadline had been agreed upon;
- By fraudulent concealment of defect;
- With provision of a guarantee and/or the procurement or manufacturer risk in the sense of § 276 (BGB) by **DMS**;
- In cases of binding legal liability, in particular under the Product Liability Act.

Burden of proof at the expense of the customer is not connected with the above-mentioned provisions.

C.10.03

In the case of a breach of duty that does not consist of a defect, the customer can only withdraw or terminate the contract when **DMS** is responsible for the breach of duty. A customer's right of termination (in particular according to §§ 651, 649 -BGB) is excluded. Otherwise the statutory requirements and legal consequences shall apply.

C.11 Orders on call – Orders

C.11.01

If orders on call are not called within four weeks after the expiry of the calling period, **DMS** has the right to ask for payment.

C.11.02

The same applies to orders on **call**, without an especially agreed calling-period, if 4 months have passed upon receipt of the notice by **DMS** without being called.

C.12 Storage/Delay of acceptance

C.12.01

DMS is not obliged to insure stored goods.

C.12.02

In case of delay of acceptance of delivery, **DMS** is entitled to have the goods stored by a business authorized to do so and at the cost and risk of the customer.

C.12.03

For storage by **DMS**, **DMS** is entitled to charge 0,5 % of the billing amount per month, at least €30.00 and an additional €25.00 for every second cubic meter of the goods. The customer has the right to verify whether the claim is justified or that it is less.

C.12.04

The two paragraphs above shall also apply where the delivery is delayed on request of the customer for more than two weeks after the ready-to-ship notification.

C.12.05

If the purchaser does not accept the ordered goods in spite of the deadline, **DMS** has the right, irrespective of proof of actual loss, to demand compensation of a 25 % of the agreed purchase price, unless the customer proves lesser damages.

C.13 Proprietary right

C.13.01

Any deliveries by **DMS** occur under reservation of proprietary right and are subject to payment.

C.13.02

This condition together with the following extension applies until payment of all claims originating from the business relationship with the customer, until full release from contingent liabilities that **DMS** has assumed in the interest of the customer and which are connected with part of the delivery agreement.

C.13.03

Pawning/mortgaging of any goods supplied by **DMS** shall not be permitted.

C.13.04

DMS is entitled to demand its goods that are subject to reservation for important reasons, especially for payment delays against charge of the liquidation proceeds.

This reclaiming does not constitute a withdrawal from the contract. The condition is that **DMS** had warned the customer with a demand for restitution with a 7-day performance deadline. This deadline can be set at the same time the warning is given.

C.13.05

When and if the goods taken back by **DMS** can be sold as new in the ordinary course of business, the customer owes 10 % of the goods invoice value as repossession costs, without any special evidence. If it is not possible to sell as new in the ordinary course of business, the customer owes an additional 30% of the goods invoice value for loss of value, without any special evidence. The customer reserves the right to provide proof of a lesser percentage.

C.13.06

DMS explicitly reserves the right to assert other, further damages.

C.13.07

Processing of the goods delivered by **DMS** is always performed on order by **DMS**, so that the goods under exclusion of the consequences § 950 (BGB) remain in the ownership of **DMS** in every processing state or even as finished goods. If the goods that are subject to retention are processed with other goods under exclusion of the legal consequences of § 950 (BGB), **DMS** achieves at least a joint ownership of the new goods in proportion to the invoice value of the goods of **DMS** compared to the invoice value of the other processed goods.

C.13.08

The customer hereby assigns all claims from reselling, processing, installation and other exploitation of our goods to **DMS** in advance. Insofar as the objects sold, processed or installed by the purchaser contain items that are not owned by the purchaser and for which other

suppliers have likewise stipulated retention of title with sales clause and assignment in advance, the assignment is performed in regards to the joint ownership proportion of **DMS** that corresponds with the claim proportion, otherwise to the full extent.

C.13.09

The withdrawal entitlement of the customer that remains in spite of the assignment expires upon revocation that is admissible at any time.

C.13.10

If the value of the sureties due to **DMS** exceeds the debt claim of **DMS** towards the customer on delivery of goods by 50 %, by other performances by 20 %, **DMS** shall be obligated on the request of the latter to release securities of an appropriate scale, at the discretion of **DMS**.

C.14 Place of performance and fulfilment of service

C.14.01

Place of performance and place of fulfilment of services to be provided by **DMS** is always the **DMS** company site. This also applies when **DMS** assumes the transportation themselves.

C.14.02

The place of performance for services provided by the client is the **DMS** headquarters.

C.15. Headings/Definitions

C.15.01

All headings in the **DMS** terms and conditions of business shall only serve to facilitate legibility and have no influence on the significance and interpretation of the individual regulations.

C.15.02

As written will letters of intent defined in **DMS's** Terms and Conditions, all declarations must also be sent in writing (e.g. via fax or email).

C.16 Jurisdiction and substantive law

C.16.01

The **DMS** headquarters is the place of jurisdiction for all legal disputes arising from or in connection with the contractual relationship between the contract partner and **DMS**.

In case mentioned above, **DMS** has the right to take legal action against the contracting party on its respective in its respective locale.

C.16.02

The laws of the Federal Republic of Germany apply with exception of the UN uniform law, in particular the international sales law (CISG).

The prerequisites for and the effects of retention of title according to clause C.13 shall be governed by the law in force at the location of the case when, under that law, the choice of German law is not permitted or is invalid.

C.17 Conclusion

If any of the provisions in these terms and conditions or a later-incorporated provision becomes partially or wholly invalid, void or unenforceable, or if there is an omission in these terms and conditions, the validity of the remaining provisions shall not be affected. § 306 para. 2 and 3 (BGB) remain unaffected.

D. General rental conditions

D.1. Contract item

Upon special request in individual cases, **DMS** also offers the customer the rental of moveable goods (especially construction machinery, tools, etc.) for testing purposes before purchase. The details (especially for arrival, duration, handover of the leased property, rent, return of the rental, etc.) are governed by a separate agreement between the **DMS** and the client. The following regulations apply to addition.

D.2. General rights and obligations of DMS

D.2.01.

DMS provides the customer with the rental for the agreed rental period. The handover of the rental item to the customer takes place at the **DMS** headquarters.

D.2.02.

DMS is entitled to demand appropriate security deposits from customers at all times.

D.2.03.

DMS's no-fault warranty liability because of initial defects of the leased property is excluded. Moreover, section C.10 in these terms and conditions applies to **DMS's** liability.

D.3. General rights and obligations of the customer

D.3.01.

The customer agrees to use the rental equipment only for its intended use, to carefully observe all relevant accident prevention and health and safety regulations, to read the user manual before operating, to treat the rental equipment properly, appropriately and professionally, to pay the agreed rent to **DMS**, and to return the rental equipment to the **DMS** headquarters cleaned and refuelled as soon as the rental period ends.

D.3.02.

The rent and related costs are to be paid immediately by the customer with a down payment.

D.3.03.

The transport of the rented property is at the expense and risk of the customer.

D.4. General service conditions

The general conditions from **DMS** described in section C apply to the contractual relationship between the parties and for the lease of movable property.