

of TGW Software Services GmbH  
for the Sale of Material Handling Equipment

08/2014

## 1. Scope of Application

These general bid terms shall always be applicable for any mutual claims arising from and in connection with a contract concluded between the Client (hereinafter referred to as "CLT") and TGW Software Services GmbH (hereinafter referred to as "TGW"). These Terms and Conditions shall exclusively apply to companies, corporate bodies under public law or special funds under public law. Any conflicting terms or terms of the Client ("CLT") deviating from these General Terms and Conditions shall only be applicable, if their application was expressly agreed in writing. Other terms and condition of a general nature of the CLT shall not be a basis of the TGW quote and will herewith expressly be objected. In the event of a contract being awarded such terms and conditions will not be an integral part of the contract. The CLT may nevertheless continue to refer to his General Terms and Conditions of Business for reasons of simplicity.

## 2. Pricing

Unless otherwise agreed, all prices are understood as net prices ex works, including the necessary packaging, transportation, transport insurance, unloading and transport on site. Changes of supplies and services requested by the CLT will be offered by TGW in the form of revised quotes. Realisation of such Change Request shall take place only upon prior written order of the revised quote.

If unforeseeable changes in TGW's costs occur after the conclusion of contract as a result of legal or official decrees or as a result of variations in the prices for raw materials, TGW shall be entitled to request these cost changes correspondingly from the CLT. This shall likewise apply to the bid as well as order phase.

The mutual off-setting of claims under this contract shall only be permissible if this matter has been recognised by the other contracting party in writing or through court stipulations.

In case of follow-up orders, there shall be no commitment to previous price agreements.

## 3. Terms of payment

Payments shall be made pursuant to invoicing and each due date under the following payment plan:

- 30 % advance payment upon receipt of order confirmation
- 30 % part payment upon start of installation or not later than 2 weeks after reporting readiness for delivery.
- 30 % part payment upon go-live
- 10 % final payment upon passed final acceptance, however not later than 4 weeks after the originally scheduled date of final acceptance, unless the delay has culpably been caused by TGW

Partial payments shall be made at the latest within 14 calendar days, net without discount, following receipt of an auditable invoice.

In case of delayed payments the CLT shall be obliged to pay default interests amounting to 8%-points above the respective

valid base rate as of the due date of the outstanding invoiced amounts. In the event of delayed payments caused by the CLT, TGW shall have the right to suspend the performance of its supplies and services until payment of all outstanding invoiced amounts.

If the execution of the project will be interrupted without the work being made impossible in the long term, the scope of supply and services performed up to that time shall be settled and the costs, which have already been incurred for TGW and which are included in the portion of the fixed lump sum for the service not performed, shall be remunerated.

## 4. Delivery, schedule

Deliveries shall be made in accordance with INCOTERM 2010: EXW (Ex Works).

Dates and deadlines will result from the agreements made between the contracting parties. In the event of the CLT's non-compliance with the participatory obligations or a delay in the progress of potentially pending sub-supplier equipment as well as the existence of force majeure, the dates and deadlines shall be mutually agreed anew. Delays in the project due to the aforementioned reasons shall not imperatively lead to an analogous shift of the schedule.

If the execution of a project will be interrupted without the work being made impossible in the long term, the scope of supply and services performed up to that time shall be settled and the costs, which have already been incurred for TGW and which are included in the portion of the fixed lump sum for the service not performed, shall be remunerated.

## 5. Scheduling delay

In case TGW exceeds the contractually agreed date of "go-live" (start of beneficial use) despite of setting a reasonable period of grace for reasons attributable to it, and the CLT credibly shows that a damage has been caused to it by this, the CLT will be entitled, to the exclusion of further claims, to claim compensation for delay in the amount of 0.5% per each finished week, but limited to a maximum amounting to 5% of the value of that part of deliveries which cannot be used for its intended purpose as a result of the delay.

In case of delays in the project execution caused by the CLT, it shall be obliged to compensate TGW for costs thereby incurred (in particular project management costs, site management costs, intermediate storage costs, costs for delayed incoming payments, costs for the extension of bank guarantees etc.).

## 6. Retention of title

TGW's scope of supply and services shall remain its the property until full settlement of all existing financial obligations of the CLT towards TGW. This property right shall also remain in force when the scope of supply and services is firmly connected to and/or integrated into the CLT's property.

As long as the retention of title exists, the sale, pledging, cession by security and leasing or any other form of transfer of the

deliveries performed by TGW shall not be permitted without the express written consent by TGW. In case of a pledging or any other utilisation by third parties of equipment supplied by TGW or parts thereof, the CLT shall have the obligation to assert TGW's property right and to inform TGW about these circumstances without delay.

In case of sale of the object under TGW's retention of title, the claims of the CLT will take the place of that object, without the need for an express assignment of it to TGW.

As far as the value of all security interests, which are due to TGW, exceeds the amount of all secured claims by more than 30 %, TGW shall release a corresponding part of the security interests at the CLT's request.

## 7. Transfer of risk

Transfer of risk shall take place with the utilisation, or partial utilisation of the equipment, also by third parties, but at the latest 4 weeks after the previously agreed date for start of beneficial use.

## 8. Liability

TGW shall be liable within the scope of the legal regulations in due consideration of the following conditions:

TGW's liability shall be limited to a total of 30 % of the respective contract value as maximum liability limit. In case of damages resulting from injury of life, body or health as well as claims due to fraud, wilful unethical infliction of damage, deliberate tortious act and violation of duty through deliberate act or gross negligence, the abovementioned liability limitations shall not apply.

Liability for consequential damages as well as pure financial losses, loss of profit, loss of production, and loss of interest etc., shall in any event be excluded.

TGW shall be liable for any damages culpably caused by itself, its assistants or subcontractors as mentioned above.

## 9. Warranty

Unless otherwise agreed between the parties, TGW shall be responsible for the agreed scope of supply and services being in accordance with the contract within the scope of its legal warranty obligation. The warranty period shall commence with go-live (start of beneficial use) of the equipment, but at the latest 4 weeks after the previously agreed date and shall last for 24 months.

The CLT shall be obliged to immediately notify TGW in writing of defects that may arise during the warranty period (notice of defects). Work performed within the scope of warranty shall be carried out within normal working hours.

TGW shall be obliged, subject to a notice of defects being made by the CLT in due time, to either remedy defects or provide for a replacement at its own discretion. TGW must always be given the opportunity by the CLT to take the appropriate remedial measures within a reasonable period of time. If the supplementary performance fails repeatedly, the CLT shall be entitled to abate remuneration. The possibility of cancellation of contract shall be expressly waived.

No claims for defects shall exist in case of natural wear and

tear, in case of damage caused by incorrect or negligent treatment, excessive use, unsuitable equipment, deficient construction work, inappropriate subsoil, or because of special external influences that have not been considered in the contract.

## 10. Copyright

Any documents such as samples, cost estimates, technical drawings, layouts and/or information of a material or immaterial kind - also in electronic form - include know-how, ideas and development achievements of TGW and shall in this respect remain the property and copyright of TGW without exception. TGW shall grant the CLT the non-exclusive, indefinite, irrevocable and unrestricted right to use its scope of supply and services for the agreed purposes.

To the extent that the scope of supply includes software, the CLT shall be granted a non-exclusive right to use the supplied software including its documentation for the respective project. The CLT undertakes not to remove any manufacturers' data and the copyright notice, in particular. All other rights in the software and the documentation, including all copies, shall remain with TGW or the software supplier. The granting of sublicences shall not be permitted. Any source code shall remain with TGW.

## 11. Acceptance

The contract shall be deemed to be fulfilled with the acceptance of the scope of supply and services by the CLT.

The readiness for acceptance shall be notified by TGW to the CLT. The acceptance will have to be carried out within 2 weeks following the notification of readiness for acceptance. If this period or deadline is exceeded for reasons which TGW is not responsible for, the scope of supply and services will be deemed to be accepted without known defects.

The acceptance may only be rejected due to a significant defect resulting from TGW's scope of supply and services.

## 12. Termination

The right to terminate the contract without material reason shall be waived.

In the event of termination for a material reason TGW shall be reimbursed for the actually performed work and expenditures. Claims for compensation of the CLT shall be excluded, unless the material reason for termination was caused by gross negligence or deliberate act of TGW.

## 13. Force majeure

The obligations of the respective party subject to force majeure shall be suspended, so that the parties will mutually agree on a new schedule.

Force majeure shall be deemed an unforeseeable and inevitable event preventing one of the parties from the proper execution of its obligations hereunder. Such event may include in particular war and warlike events, terrorist attacks, explosions, natural disasters such as fire, earthquakes, floods, bankruptcy of a subcontractor, recognised labour disputes as well as extraordinary business disruptions exceeding the scope and frequency of normal business disruptions, economic sanctions, import or export prohibitions etc.

If a party is or will be prevented from performing any of its obligations under this contract by an event of force majeure, it shall immediately give notice to the other party of the beginning and end of the event or circumstances constituting the force majeure..

#### **14. Confidentiality**

The parties shall, for themselves and all persons working for them, assume the obligation to maintain confidential all data and business secrets which have been disclosed in connection with the conclusion and the execution of this project. The obligation to maintain confidentiality shall continue for another 5 years even after termination of the contractual relationship.

#### **15. Project protection**

Insofar as a "customer protection" agreement has expressly been concluded between the CLT and TGW, this is to be understood as project protection of the relevant scope of supply and services of TGW. This project protection shall be valid for no longer than the duration of TGW's warranty, but may be terminated at any time upon the CLT's approval.

#### **16. Notification obligation**

The CLT will have to inform TGW without delay and in written form about objections to the scheduled mode of execution, to initial work by its subcontractors or to any discrepancies in the layouts and documents, stating its reasons.

#### **17. Miscellaneous**

If one or several provisions of these General Terms and Conditions is or becomes ineffective or has legal loopholes, the validity of the remaining provisions will not be affected.

In the event of a contract being awarded, any modification to the contract must be in written form. The same shall apply to the waiver of this written form requirement.

#### **18. Applicable law, jurisdiction**

Any agreement shall exclusively be governed by the laws of Germany, with the exclusion of the conflict of law rules of the international private law as well as the UN Convention on Contracts for the International Sale of Goods (CISG).

The competent courts at the place of TGW's headquarters shall have jurisdiction for any disputes arising from the collaboration, unless otherwise stipulated by law.