

**Wölfel Meßsysteme · Software GmbH & Co. KG (WMS)**  
**General Terms of Sales and Delivery**  
**As of April 2006**

**1. General**

- 1.1 All contracts on sale and delivery of software, equipment and accessories are subject to these General Terms of Sales and Delivery.
- 1.2 All business transactions in the frame of existing business relations, particularly orders placed personally or by phone, are governed by these General Terms of Sales and Delivery also when no specific reference or allusion was made to them.
- 1.3 Any deviations from the General Terms of Sales and Delivery are not binding unless confirmed by WMS in writing. The same applies to all covenants, amendments, and ancillary agreements.

**2. Offers and conclusion of contract**

- 2.1 The contract only becomes final on WMS's written confirmation of the order and only in the scope specified in such order confirmation.
- 2.2 Brochures and promotion statements of any kind, in particular illustrations, drawings, descriptions, power ratings of any type, dimensions, weights, and data on consumption are approximations, convey no covenants or warranties, and can only become a binding integral part of the contract if expressly confirmed by WMS in writing.
- 2.2 Our offer is subject to availability of the product in question.

**3. Prices and terms of payment**

- 3.1 The only applicable prices are those specified in the order confirmation plus statutory value added tax. Pricing and invoicing is in EURO and understood net ex works, without packaging, freight, insurance, and delivery charge; these are invoiced separately.
- 3.2 The following terms of payment apply:  
Invoices for purchased software or hardware are payable strictly net within 14 days after invoice date. Orders of a complete system (software and hardware) are subject to the following terms of payment:
  - 50% after receipt of the order confirmation
  - 50% after delivery of the entire system,in each case strictly net within 14 days after invoice date.

- 3.3 Should the due date expire without payment, the other party immediately is in default vis-à-vis WMS without specific dunning notice. From this day, the other party owes WMS default interest in the amount of 3% above the applicable discount rate of the Deutsche Bundesbank, and generally no less than 6%.
- 3.4 If the other party is in default pursuant to this clause, WMS is not obliged to fix a period of grace to be able to withdraw from the contract and/or claim damages for non-performance and/or claim and assert any other rights.
- 3.5 The other party cannot offset any payment due with claims it may have against WMS unless such claims are uncontested or final. Also in the frame of ongoing business relations, each contract is to be considered as a separate contractual relationship. Notices of defect of any kind do not justify withholding of payments.

#### **4. Delivery period**

- 4.1 The delivery period is as specified in the written order confirmation by WMS.
- 4.2 WMS may carry out partial deliveries.
- 4.3 Subject to receipt of correct and prompt delivery by WMS's own suppliers, WMS assures that they will do their best to keep the promised term of delivery. However, WMS cannot guarantee the delivery period. The specified delivery terms start at dispatch of the written order confirmation unless the customer must make advance payments. In this case, the delivery period starts at completion of the other party's advance payment.
- 4.4 If a term of delivery is not kept for reasons attributable to WMS, the other party may fix a reasonable period of grace in writing after expiry of the original term of delivery. If this period of grace expires unsuccessfully, the other party only has the right to withdraw from contract. Any other rights for any legal reason whatsoever, in particular damages of any kind, are excluded unless WMS procured the delay in delivery intentionally or with gross negligence. In case of force majeure or interference by higher authorities, WMS has the right to effect delivery at a later date or not at all. In these cases, the other party cannot assert any rights or claims from late delivery or non-delivery, not even if WMS is already in default.

#### **5. Passing of risks**

- 5.1 When the goods are in the distributing warehouse and ready for dispatch, risk passes from WMS to the other party.
- 5.2 If the other party gave no specific instructions regarding the dispatch from the point of passing of risks, WMS shall arrange at the other party's costs for the dispatch to the agreed place of delivery. In this case, WMS takes no liability. WMS does not automatically take out transport insurance.

- 5.3 Any complaints regarding the transport from the point of passing of risk must be asserted vis-à-vis the forwarding agents by the other party.

## **6. Warranty and liability**

- 6.1 Bugs in the software identified by the buyer within 6 months after handover of the program shall be remedied free of charge at a date to be coordinated with the buyer. To enable WMS to provide the guaranteed performance, the buyer may possibly have to allow use of its hardware free of charge for a short period of time. If the user makes changes to the program resulting in malfunction, the warranty shall be forfeited. Any warranty claims beyond this, for example for delay, direct or indirect damage, or third-party damage, are excluded. Liability is limited to the purchasing price.
- 6.2 For hardware delivered by WMS, the period of warranty is 12 months. Warranty starts with passing of risk to the other party. The warranty period for products supplied to us starts with passing of risk to WMS. In all cases, WMS can choose whether to repair or to replace the defective delivery object. Repairs or replacement deliveries generally do not result in an extension of the warranty period. Any warranty claims beyond this, for example for delay, direct or indirect damage, or third-party damage, are excluded. Liability is limited to the purchasing price.
- 6.3 The other party shall notify WMS in writing immediately, i.e. not later than 7 days after receipt of the delivery object, of any apparent defects. Other defects not identifiable by means of thorough examination during this period of time must be announced to WMS in writing within one week after detection. WMS has the right to check the delivery item before performing the warranty service.

## **7. Reservation of title**

- 7.1 We reserve title to the purchased item until receipt of all payments due according to the delivery contract. If the customer is in violation of the contract, in particular by default of payment, we are entitled to withdraw the purchased item. Withdrawal of the purchased item by us does not constitute our withdrawal from the contract, unless expressly declared in writing. Pledging of the purchased item by us always constitutes our withdrawal from the contract. After withdrawal of the purchased item, we have the right to use it and to offset the proceeds from such use against the monies owed by the customer, minus reasonable expenses incurred by us.
- 7.2 The customer is obliged to treat the purchased item with care, and in particular to insure it at its own expense at replacement value against damage from fire, water, and theft. Any maintenance and inspection work that may be required must be duly carried out by the customer at its own expense.

- 7.3 Any processing or conversion by the customer is always carried out for us. If the purchased item is processed with other things not belonging to us, we shall acquire co-ownership in the new thing in the ratio of the value of the purchased item (billed total including VAT) to the other mixed-in things at the time of commingling. Generally, the new thing created by such processing is subject to the same regulations as the purchased item under reservation of title.
- 7.4 If the purchased item is inseparably mixed with other things not belonging to us, we shall acquire co-ownership in the new thing in the ratio of the value of the purchased item (billed total including VAT) to the other mixed-in things at the time of commingling. If commingling is carried out in such a way that the customer's item is to be considered the main component of the new thing, it is considered agreed that the customer transfers to us a pro-rata co-ownership. The customer shall keep the solely owned or co-owned thing created in this way for us.

Until the user has fulfilled all financial obligations arising out of the entire business relation, the delivered items remain the property of WMS. At any time, WMS is entitled to demand that the items belonging to us are handed over. Failure to assert handover does not constitute waiver of handover.

## **8. Program protection**

WMS software programs are protected against access to the listing and against unauthorized use (standard delivery with USB dongle). The dongle is the license proper, and must accordingly be treated with care. Replacement dongles delivered following loss or theft are invoiced at 80% of the price quoted in then valid price list for the respective version.

## **9. Copyright**

The generally valid agreements in respect of copyright apply. In particular, WMS only transfers to the customer single right of use (multiple right of use for multiple copies) of the software. Transfer of the user rights to third parties is subject to WMS's consent.

## **10. Export control regulations**

All international transactions with WMS are subject to the German foreign trade regulations.

## **11. Final regulations**

11.1 All transactions between the parties are exclusively subject to German law.

11.2 Should one of the regulations of these Terms be or become invalid in whole or in part, the validity of the remaining regulations shall not be affected.

11.3 Place of jurisdiction is Würzburg.

Höchberg, in April 2006

Signed for the management:

Dr. Ing. K.-G. Krapf, J. Preißinger (commercial)