

## **Terms and Conditions**

The Terms and Conditions of "**W2P Engineering GmbH**", hereinafter referred to in brief as "**W2P**", are as follows:

These terms of engagement apply for all activities undertaken as a result of a contractual relationship between W2P and the contracting party (hereinafter referred to in brief as the "**CP**"). The Terms and Conditions, as amended, are therefore an integral part of all orders issued by the contracting party to W2P, regardless of whether contrary Terms of the CP exist.

### **1. Offers and contract execution**

#### **1.1 Formation of a contract (between W2P and CP):**

Contractual offers remain binding for 3 weeks from notification to the CP. Contracts with W2P (orders to W2P) become effective immediately upon signing by the CP or oral or implied agreement. W2P is, independent of the execution of the contract, only obliged to provide the service upon receipt of payment (see also Section 3.1 of these Terms and Conditions) of the first partial amount plus any additional costs agreed in relation with project start-up to the account provided by W2P.

1.2 Obvious errors contained in quotations, printed materials, calculations or spelling shall not be binding on W2P with respect to the CP and thus do not provide the CP with any entitlement to compensation.

1.3 Information in catalogues, price lists, brochures, advertisements on exhibition stands, newsletters, mailers or other media (information materials), in particular also technical data which are dependent on the current state of technology and performance characteristics of machinery/equipment and/or materials of W2P are not binding, unless they are declared in writing to be part of the content of the contract.

#### **1.4 Written form:**

The written form within the meaning of these Terms and Conditions is ensured by sending hand-signed documents by mail, fax or scanned by e-mail. If there is no separate written contract, only those provisions specified in these Terms and Conditions are considered to be a contract, in particular if an implied order is placed (e.g., transfer of a partial payment or if project activity is begun without a signed contract, in agreement with the CP).

1.5 Oral side agreements, additions and changes to written contracts and these Terms and Conditions are required to be in written form, including the agreement to depart from the requirement of written form. Verbal promises, assurances and any guarantees by W2P are binding only after written confirmation. The CP waives the defence of claiming oral side agreements in any possible proceedings. Should one or more provisions of written contracts or these Terms and Conditions be invalid for whatever reason, the validity of the remaining provisions shall remain unaffected. The Parties will replace the invalid provision by a valid one which comes as close as possible to the intention of the invalid provision (severability clause).

### **2. Prices**

2.1 The prices (in Euros) are (in the case of offsetting of charges) understood to be exclusive of the applicable statutory value added tax and do not include preparation, packing, loading and transportation costs and/or possible costs arising for assembly or installation (travel, per diem, and overnight accommodation). Costs for customs and customs clearance as well as insurance are charged to the CP.

2.2 If additional services are provided by W2P that were not explicitly included in a previous written order or oral orders are issued to W2P, W2P expressly reserves the right to assert an industry standard fee after written confirmation.

2.3 W2P is only obliged to take back packaging materials by express agreement. The technically and environmentally sound disposal of waste material (packing material, machinery parts, and any other materials), shall be initiated by the CP at its own expense.

### **3. Terms of payment**

3.1 Invoices above a total amount of € 2,000.00:

50% of the invoice amount at execution of the contract (deposit, see also Section 3.5.3).

50% of the invoice amount on notification by W2P to the CP that the device/product is ready for delivery.

3.2 Invoices below a total amount of € 2,000.00:

These invoices are due for immediate payment upon receipt of the invoice and without deduction/discount.

3.3 Invoices and the claims raised therein shall be recognized if they are not objected to in writing by the CP within 7 days of submission of the (partial) invoice. The authorization of a discount deduction requires explicit written agreement.

3.4 The CP agrees that invoices/partial invoices of W2P may be created in electronic format and also transmitted to the CP in this format.

3.5 Default: In the event of default in payment by the CP, the following is agreed:

3.5.1 If the CP is two weeks in arrears after receipt of a (partial) invoice for the deposit in the amount of 50%, immediate cancellation of the project will occur. Without prejudice to any other rights, in this case W2P shall be entitled to claim 50% of the respective agreed (deposit) payment as liquidated damages for the project costs incurred up to this point.

3.5.2 If the CP, after issuance of the invoice, is two weeks in arrears with a partial payment of 50%, W2P is entitled to withdraw from the contract and cancel the project, whereby the already made deposit of 50% is forfeited, or to insist on fulfilment of the contract in consideration of those general consequences of default referred to herein. If W2P insists on the performance of the contract, a reasonable extension of the period of performance is considered as agreed (see also Section 6.2).

3.5.3. If the CP is more than 2 weeks in arrears with payments, it shall pay default interest at the rate of 8% per annum above the applicable base rate from issuance of the (partial) invoice. The CP shall pay all costs incurred by W2P that are necessary for pursuing the appropriate legal action (dunning, collection fees, attorney fees, etc.) and proportionate to the asserted claim.

3.5.4 The CP has expressly waived the right to offset its own claims against claims of W2P or other claims under this contract and to withhold services to be provided under this contract. The CP is especially not entitled to withhold payment because of incomplete delivery, guarantee or warranty claims, or defect claims. This waiver of offsetting and retention does not apply to certain claims that have been established by court order or recognized by W2P.

3.5.5 All discount agreements granted under the contract become invalid in the event of default and W2P shall (regardless of the stage of the project/order and the services W2P has already provided) be entitled to claim 100% of the original invoice amount.

3.5.6 If the CP is in arrears under other existing contractual relationships with W2P, W2P is entitled to suspend the performance of obligations under the (new or recently concluded) contract until fulfilment of obligations by the CP.

3.5.7 Incoming payments are first credited against the outstanding amounts which have been due the longest (regardless whether an ultimate use was specified at payment) and first against interest and fees and lastly to the pure balance of the invoiced amounts.

3.5.8 The W2P is also entitled, in the event of changes or deterioration of the assets of the CP (insolvency proceedings), to seek immediate payment of the agreed amount or purchase price and only perform or complete execution of the order against payment in advance.

#### **4. Materials and their use**

4.1 The CP is informed about the fact that:

4.1.1 only materials which are distributed by W2P itself or made or sold by an official partner with knowledge of W2P may be processed in W2P machines/devices;

4.1.2. the material properties such as colour, biocompatibility, mechanical properties, etc. only meet the details or specifications if the process prescribed or certified by W2P or its partner is strictly adhered to;

4.1.3 Properties, descriptions, specifications such as "biocompatibility" or "biocompatible materials" or related descriptions, representations or expressions in brochures, advertising materials or all other information media are not guaranteed by W2P but by the respective material manufacturer if a specific process is complied with.

#### 4.2 The CP commits

4.2.1 to not adulterate, use in a modified form, mix, adapt, analyse, process, or use in any other form any materials sold by W2P or by official partners;

4.2.2. to not make any changes to products manufactured by W2P machines/equipment nor use or process any materials not tested and certified by W2P.

4.2.3. with respect to materials sold by W2P to make immediate written notification of a detected defect and provide the free delivery of a sample of at least 200 ml to W2P for verification of this sample. W2P reserves the right to, within a reasonable period of time, perform its own inspections or have inspections conducted by its partners in order to identify a possible defect. Should it be determined that the defect indicated by the CP is due to its manner of storage or use or otherwise caused by the CP's own mistake, the CP is obliged to bear the costs of the conducted inspection.

4.3 W2P assumes no responsibility for production interruptions and consequential or other damages related to the use of a non-biocompatible product/material, a defective product supplied by the material manufacturer, a material incorrectly declared or certified by the material manufacturer or a third party or process parameters prescribed/recommended or set by an official material partner of the CP or W2P or by a third party.

4.4 Claims or claims for defects in relation to material that was sold by W2P must be asserted within a period of 4 weeks from the transfer of the material due to the limited shelf life of the material.

### 5. Warranty

5.1 The products supplied by W2P are free of defects if upon transfer of risk they comply with the specifications agreed or laid down in the information materials of W2P. The CP shall be obliged to report any defects to W2P immediately. The burden of proving the existence of a defect shall always be borne by the CP.

5.2 If a defect in the product occurs, the CP may initially require only the repair or replacement of the product. W2P shall be allowed at least 3 attempts at repair.

5.3 If both repair and replacement of the product are impossible or would involve disproportionate expense for W2P, the CP has the right to a price reduction. If it is a substantial and irreparable defect or W2P refuses repair or replacement of the product, for whatever reason, the CP has the right to conversion.

5.4 If the defect cannot be remedied at the installation site on the CP's premises, W2P will instruct that the defective part or the defective product be sent to W2P.

5.5 Transport and travel expenses resulting in the context of the corrective action shall be paid by the CP.

5.6 The warranty period of W2P for the delivered device (printer) in relation to the CP is one (1) year from delivery.

5.7 Defect claims principally exclude normal wear and tear of normal wear parts or consumable items, and in particular components such as LEDs, DMDs, guides, trays, construction platforms, buttons and the like. Furthermore, defect claims do not include damage arising from the excessive, incorrect, improper or non-prescribed use or the use of unsuitable resources or materials that are not supplied by W2P or an official partner; furthermore, damages are excluded that arise from technical equipment of the CP, in particular the supply lines, cabling, networks or computers, not being kept in proper working order, where delivered products are not compatible with the equipment of the CP or other local

conditions exclude trouble-free use, or the CP does not fulfil his duty to cooperate (see also Section 9). The CP further relinquishes all warranty claims if work of any kind (repair, servicing or maintenance) was done on the delivered product by the CP itself or by third parties who are not authorized partners of W2P.

5.8 W2P is entitled to carry out any additional investigation it deems necessary for the determination of the existence of a defect or for the determination of the lack of defects. In the event that the investigation reveals that W2P is not responsible for any deficiency, the CP shall bear the reasonable costs of investigation, even if the delivered product or individual components are rendered unusable by the chosen method of investigation. The CP has no claim to reimbursement of costs for products or product components damaged in this way.

## **6. Delivery and transfer of risk**

6.1 Delivery periods and dates are only binding for W2P if they are specified in writing.

6.2 In the case of force majeure, strikes, natural disasters or when there are unforeseen circumstances that are beyond the control of W2P, such as, in particular, in the supply of product components by other contractors, delays in customs clearance or if the CP has missed a payment deadline (see also Section 3.5.2), the agreed delivery deadlines and delivery dates will be postponed by the duration for which the corresponding event continues. If the agreed delivery is exceeded by more than 30 days, then the CP is entitled to withdraw from the contract under application of a 90-day grace period, which must be granted in writing. In this case, the CP waives the assertion of any claim for damages against W2P. W2P is entitled to withdraw from the contract in writing if the delivery of the product is impossible due to the circumstances invoked in this Section 6.2. Only in this case is W2P obliged to refund a deposit; any payment received will be refunded to the CP interest-free.

6.3 If the start of the service execution or the execution itself is delayed or interrupted by circumstances attributable to the customer, in particular because of a violation of the duty to cooperate under Section 9, the performance deadlines will be postponed accordingly.

6.4 W2P is entitled to charge a reasonable fee per started month for the resulting need for storage of materials, equipment and the like at the W2P company premises, and the CP's obligation to pay as well as its acceptance obligations remain hereby unaffected.

6.5 The delivery or shipment of the product by W2P is carried out in each case at the expense and risk of the CP. The risk of loss and the risk of unforeseen deterioration of the object of the delivery, even in event of any partial deliveries or early deliveries, transfers to the CP upon handover of the product to the supplier, shipper or other specified person. This also applies if W2P took over the delivery and the installation/assembly of the product. Complaints resulting from transport damage must be reported to W2P by the CP in writing immediately upon receipt of the product.

6.6 In this case, W2P is free to make its own choice as to the type of shipment of the product and the mode of transport, provided that no particular type of shipment or mode of transport has been agreed between W2P and the CP.

6.7 The product will be shipped without insurance against theft, breakage, transport, fire and water damage or other insurable risks. If such a desire is expressed in writing, W2P can take out such insurance at the CP's expense.

## **7. Supplied goods or products**

7.1 If equipment or other materials are provided by the CP, W2P is entitled to charge the CP 20% of the value of the provided equipment or material as a handling surcharge.

7.2 Such devices and other materials provided by the CP are not covered by the warranty.

7.3 A duty of inspection and warning on the part of W2P with regard to the documentation, transmitted data or instructions provided by the CP is excluded.

## **8. Retention of title**

8.1 The delivered, mounted or otherwise transferred product remains the property of W2P until full payment (including interest and other costs) is made.

8.2 Resale is only permitted if this is announced to W2P in good time beforehand, indicating the name and the exact address of the purchaser, and if W2P agrees to the sale. In the event of approval by W2P, the claim to the purchase price is already considered as ceded to W2P.

8.3 In the case of an assertion of retention of property, a cancellation of the contract occurs only if this is explicitly stated.

8.4 In the case of an assertion of retention of property by W2P, the CP is obliged to return the respective product immediately. W2P is entitled to utilize the recovered retained goods privately and to the best possible effect.

8.5 The object of the service/purchase may neither be pledged as collateral nor otherwise encumbered by third-party rights until full payment of all claims asserted by W2P. Should this nevertheless be the case, the CP is obliged to inform W2P immediately in writing.

8.6 Necessary costs appropriate for reasonable prosecution will be borne by the CP.

### **9. Obligations of the CP / duty to cooperate**

9.1 With regard to installation work to be performed by W2P, the CP is obliged to ensure that work can be started immediately after the arrival of the installation personnel of W2P. The CP shall, in particular, ensure that the site meets the technical requirements for ensuring proper functioning of the product.

9.2 The CP is responsible for ensuring that the technical equipment, such as cables, cabling, networks and the like, are in perfect technical and operational condition and are compatible with plants, machines and purchased items to be manufactured by W2P.

9.3 W2P is entitled but not obliged to check this equipment for an extra fee.

9.4 The CP shall obtain all official permits and approvals required for its business location; if these are not available or have not been granted, the CP is not entitled to withdraw from the contract on this account.

### **10. Intellectual property**

10.1 All deliverables and related design documents, plans, sketches, process parameters, cost estimates and other documents as well as software and machine software which are provided by W2P or produced with W2P's contribution remain the intellectual property of W2P.

10.2 The CP is not permitted to make (even partial) disclosure, reproduction, or publication without written permission from W2P; otherwise, damages may be sought.

10.3 The CP further undertakes to keep know-how received in the course of the business relationship secret from third parties.

### **11. Software**

11.1 If the scope of supply and object of sale include software components, software modules, computer programs or process parameters, W2P will in this case, under these Terms and Conditions, grant the CP a non-transferable user license for the agreed installation site. This is based on compliance with the operating instructions and documentation.

11.2 The CP is not entitled to modify the software, the machine software or parts thereof, to reproduce it, to circumvent it, to make it available to third parties or to use it for other than the agreed purpose of the contract without the prior written consent of W2P. This applies in particular to the source code of the software or the machine software. The CP is also especially prohibited from providing to third parties particular elements of the software, such as process parameters for non-certified materials.

11.3 W2P is not responsible for the full and proper condition/operation of the software, software components, machine software, any software updates and stored process parameters.

### **12. Liability and compensation**

12.1 W2P is liable only for intentional or grossly negligent damage. The CP bears the burden of proof for a possible fault on the part of W2P.

12.2 W2P shall be free of liability for indirect damages, especially consequential damages, lost profits, damages from business interruption and damages from third-party claims against the CP.

12.3 Claims for damages of any kind shall in any case be forfeit unless asserted in court within a period of 6 months from issuance of the written order.

### **13. Final provisions**

13.1 Austrian law applies.

13.2 This agreement is subject exclusively to Austrian law; the CISG is excluded.

13.3 The place of jurisdiction for all legal disputes arising from the contractual relationship or future contracts between the CP and W2P is the court with jurisdiction over the registered office of W2P in Austria.

January, 2018