

# WESTCAM Technologies GmbH

## General Terms and Conditions

### General Terms and Conditions of WESTCAM Technologies GmbH (hereinafter "WESTCAM")

#### I. Application and Validity

(1) These General Terms and Conditions shall apply to all deliveries and services by WESTCAM as far as no special terms and conditions have been agreed in the individual case. (2) These General Terms and Condition shall also form the legal basis for all subsequent business transactions, even if they have not been agreed upon separately each time with the contract partner. (3) Any terms and conditions of the contract partner shall not apply to the subject transaction unless they have been acknowledged by WESTCAM expressly and in writing in each individual case. (4) The state of the art shall be taken into account in the making of deliveries and the rendering of services.

#### II. Validity of contracts

(1) All orders and agreements shall be legally binding only if they have been confirmed in writing and duly signed by WESTCAM. (2) All offers from WESTCAM are not binding as a matter of principle.

#### III. Extent of contract

(1) The extent of the services shall depend on the order confirmation or on a written specification of services confirmed by WESTCAM and by the contract partner. (2) The written specification of services shall form the basis for the creation of individual programs (CNC programs, customer adjustments, etc.). For the creation of CNC programs, drawings or plans conforming to the applicable standards shall suffice. (3) Where software programs are ordered, the principal confirms with his order that he is familiar with the extent of performance of the ordered programs.

#### IV. Rendering of services

(1) Services may be rendered at WESTCAM's choice either by WESTCAM itself or by third parties commissioned by WESTCAM. (2) As far as delivery and services are severable, WESTCAM may also render them in parts. (3) The transport of deliveries shall happen at the contract partner's risk and expense. (4) The contract partner shall on his own initiative ensure that WESTCAM will receive in time all material necessary for performing and implementing the contract and that WESTCAM will be informed of all events and circumstances that are of importance for carrying out the order. The same shall apply to all material, events, and circumstances that become known only after WESTCAM's work has already started. Also, the contract partner shall create the organisational framework conditions for the rendering of services. (5) If the implementation of the legally binding order is prevented by the contract partner, WESTCAM may insist on performance or demand damages in the amount of the full remuneration. (6) If the order is not carried out as a result of circumstances that are attributable to WESTCAM and that constitute an important reason for WESTCAM, WESTCAM shall only be entitled to such part of the remuneration as corresponds to the services rendered so far.

#### V. Prices and payment

(1) Payments received without indication of their purpose shall be first allocated to reminder fees, then interest, and then to the chronologically oldest open claim. (2) A rate of 12% p.a. is agreed upon as default interest. (3) The contract partner must not hold back payments on the grounds of incomplete total delivery, guarantee claims, or warranty claims. (4) Payments agreed upon cannot be set off against counter-claims by the contract partners unless the counterclaim has been assessed by a court. (5) The contract partner recognizes WESTCAM's right that claims may generally be assigned or sold. (6) Compliance with the agreed payment deadlines shall constitute a material condition for the performance of deliveries or services by WESTCAM. If the payment terms agreed upon are not complied with, WESTCAM may discontinue any work and delivery and rescind the contract. The services rendered by WESTCAM so far shall then be accounted for, and the contract partner shall bear these costs. Any claims of WESTCAM for full performance and payment as well as for damages shall remain reserved for WESTCAM. (7) With orders that comprise several units, WESTCAM may invoice after the delivery of each individual unit or service. Part invoices shall be subject to the same payment terms as have been agreed for the whole contract. (8) The prices shall be based on the calculation of costs at the time such prices have been stated. If there are changes to the basis for calculation until the time of delivery, WESTCAM may adjust the prices in a reasonable amount. (9) The buyer expressly agrees that invoices may be sent electronically by e-mail as a PDF attachment without any formalities to an e-mail address to be announced by the buyer.

#### VI. Packing

(1) The prices stated are understood without packing. (2) Products shall be packed as usual in the trade and at the buyer's expense.

#### VII. Passing of risk

(1) Unless agreed otherwise, products are deemed to be sold "ex works" (EXW) (ready for collection).

#### VIII. Delivery times

(1) Delivery periods and delivery times of the contractor shall be not binding unless agreed as fixed deadlines. (2) WESTCAM may make part and advance deliveries. (3) WESTCAM shall not be responsible for any delays that are the result of force majeure.

#### IX. Specifications

(1) The description and definition of services must each be in writing. The specification sheet and product specifications may also be released by corresponding sample forms and the tests derived from these. (2) It shall be only after this that the products in question shall be laid out and designed accordingly. All further development cycles – in particular with development projects – shall be remunerated in accordance with the remunerations stated below and in accordance with the services rendered. (3) In particular, the specifications shall require a description of performance characteristics, special functions, hardware and software requirements, installation requirements, conditions of use, and operation of the products subject to contract.

#### X. Acceptance, notification of defects

(1) Deliveries and services of any kind, in particular including data provided, shall be checked by the contract partner forthwith. (2) If the contract partner fails to check deliveries and services – in particular data – and/or to notify WESTCAM of defects, this shall constitute a waiver of warranty claims and of any claims for damages caused as a result of defects. (3) Individually created software and/or adaptations of programs shall require program acceptance by the principal within 4 weeks from delivery, failing which the software shall be considered to be free of defects. Where software is used in actual operations by the principal, the software shall be deemed to have been accepted as free of defects in any case. (4) Notifications of defects shall be valid only if they are about reproducible defects and if they are given in writing and within 2 weeks from delivery or performance, and with regard to individual software within 2 weeks from acceptance of the program.

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### XI. Warranty

(1) The contract partner's warranty claims shall be limited to improvement, price reduction, and the supplement of missing parts. (2) The contract partner shall not have the right to refuse acceptance, delivery, or performance on the grounds of immaterial defects. (3) There shall be no warranty for programs that have been subsequently modified by the contract partner's own programmers or by any third party. (4) WESTCAM shall not be liable for any delays in delivery and performance as well as increases in cost that are caused by incorrect, incomplete, or subsequently modified data, information, or material provided, and WESTCAM cannot be in default as a result of these. Any resulting additional costs shall be borne by the contract partner. (5) If warranty claims are made without justification, WESTCAM may invoice to the contract partner the costs incurred. (6) The costs of any remedy of defects carried out by the buyer himself shall be borne by WESTCAM only where WESTCAM has given its written consent to such remedy. (7) The liability of WESTCAM for those parts of the products that WESTCAM obtained from the subcontractor prescribed by the buyer shall be limited to the warranty claims that WESTCAM itself has against the subcontractor. If a product or plant is created by WESTCAM on the basis of design information, drawings, or models of the buyer, the liability of WESTCAM shall not extend to the correctness of design but merely to execution being in accordance with the information supplied by the buyer. In that case, the buyer shall indemnify WESTCAM and hold it harmless against any violation of industrial property rights. (8) WESTCAM's duty to warn shall be limited to obviously incorrect instructions/documentation. (9) Where WESTCAM has installed parts supplied by the buyer, the warranty of WESTCAM shall be limited to the installation but not extend to the part/documentation. WESTCAM shall be under no obligation to check the provided part or material for suitability. WESTCAM's duty to warn shall be limited to obviously unsuitable parts/material. (10) Any remedy shall extend the warranty only for repaired or exchanged parts and for repair work. The warranty period shall be six months from the making of the repair or exchange; the rule of presumption of § 924 ABGB (*Allgemeines Bürgerliches Gesetzbuch*, General Civil Code) shall be excluded.

### XII. Liability

(1) WESTCAM's liability for damage resulting from slight negligence is expressly excluded. The reversal of the burden of proof stated in § 1298 ABGB shall be excluded. (2) Also, any liability is excluded for any damage that is based on incorrect operation; changed operating system components, interfaces, and parameters; the use of unsuitable means of organisation and data carriers; unusual operating conditions; transport damage; lack of organisational framework conditions; and incomplete documentation. (3) The reimbursement of consequential damage and pecuniary damage, unrealized savings, loss of interest, and damage incurred through claims of third parties against WESTCAM shall be excluded in any case. (4) Claims for damages shall be subject to limitation within one year after the delivery or service has been provided. They shall be limited to the amount of the invoice for the delivery or service triggering the claim for damages, with a maximum amount of € 100,000.00. (5) Where patents are infringed by the principal, any liability of WESTCAM is expressly excluded, and WESTCAM shall be indemnified and held harmless by the principal in this regard.

### XIII. Servicing

(1) The contractual servicing and support work shall be carried out by WESTCAM during normal working hours and either – at WESTCAM's choice – at the location of the computer system or at the business premises of WESTCAM. Additional costs as a result of services rendered outside normal working hours will be charged separately. (2) Support shall happen by telephone, e-mail, and Internet remote servicing. The support reaction time is agreed to be no more than one Austrian working day. The support times shall be the core times of WESTCAM: Mondays to Thursdays from 9:00 to 12:00 hours and from 14:00 to 16:00 hours (CEST) each, and Fridays from 9:00 to 12:00 hours and from 14:00 to 15:00 hours (CEST).

### XIV. Reservation of ownership

(1) WESTCAM reserves the ownership of the delivered products and in the products and developments created by working and processing until all existing claims have been fulfilled. (2) WESTCAM shall be notified immediately of any measures that endanger the reservation of ownership. (3) The principal shall bear the costs of any intervention proceedings and of any measures of defence that WESTCAM considers to be necessary.

### XV. Plans and documentation

(1) The information on weight, measurements, capacity, price, and performance contained in any catalogues, brochures, circulars, advertisements, illustration, price lists, etc. shall be authoritative only where they have been expressly referred to in the contract. (2) Any plans, sketches, cost estimates, and other technical documentation as well as samples, catalogues, brochures, illustrations, and the like shall at all times remain the intellectual property of WESTCAM. Any use, copying, distribution, delivery to third parties, publication, and demonstration shall require the express consent of WESTCAM.

### XVI. Copyright and use

(1) All copyrights in the agreed services (programs, documentations, etc.) shall remain with WESTCAM and its licensors. (2) The principal acquires the right to use the software only for the hardware specified in the contract and only for simultaneous use on a number of workplaces equal to the number of licenses acquired. (3) The present contract merely grants a right of use. Any distribution by the principal is prohibited by the *Urheberrechtsgesetz* (Act on Copyrights). (4) Any cooperation of the principal in the creation of the software does not result in any rights being acquired beyond the use laid down in the present contract.

### XVII. Loyalty and obligation of secrecy

(1) The contracting partners undertake to remain loyal towards each other. (2) They also undertake to keep secret any information of any kind concerning the contract partner, and not to disclose any data or documentation of any kind to unauthorized third parties. (3) This obligation must also be passed on to any third parties involved in fulfilling the mutual obligations of performance.

### XVIII. Miscellaneous

(1) Austrian law is agreed to apply exclusively. (2) The court of objectively competent jurisdiction in A-6020 is agreed to be the legal venue. (3) The United Nations Convention on Contracts for the International Sale of Goods shall not apply. (4) The place of performance for all services shall be the location of WESTCAM in A-6068 Mils. (5) Should any individual provisions of a contract or of these General Terms and Conditions be or become ineffective, this shall not affect the remaining content of the contract. (6) Any amendments to these General Terms and Conditions as well as any ancillary agreements to the contract shall be admissible and valid only in written form; this shall also apply to the cancellation of this clause on written form. Sending by e-mail shall be sufficient for adherence to written form. (7) The contract partner expressly consents to the sending of advertising e-mails by WESTCAM to him in terms of § 107 *Telekommunikationsgesetz* (Act on Telecommunications)