

GENERAL TERMS AND CONDITIONS DN Institute GmbH, January 2009

§ 1 / General Provisions – Scope of Application

All services performed by DN Institute GmbH (hereinafter referred to as “DN”) shall be based on these terms of contract. Opposing or deviating terms of the customer shall not be recognised unless they have been specifically agreed in writing. They shall apply both to follow-up orders and to ongoing business relationships. Consumers for the purpose of the business relationships are natural persons with whom business relationships are entered into without a commercial or independent professional activity being attributable to them. Contractors for the purpose of the terms of contract are natural or legal persons or partnerships with legal capacity with which a business relationship is entered into, which exercise a commercial or independent professional activity. Customers for the purpose of the terms of contract are both consumers and contractors.

§ 2 / Order placement

1. Orders shall only be binding on DN when and insofar as they have been confirmed in writing. Amendments, additions and oral side agreements of any kind must be in writing to obtain effect. This includes information and promises made by DN employees as well as experts appointed by DN. The requirement of the written form shall also apply to the amendment or revocation of this written form clause.
2. If the customer orders services from DN electronically, DN shall confirm receipt of the order without delay. The confirmation of receipt shall not constitute a binding acceptance of the order. The confirmation of receipt may be combined with the statement of acceptance.
3. If the customer orders the work electronically, the text of the contract shall be saved by DN and sent to the customer on request, together with these terms of contract of DN, by email.

§ 3 / Revocation clause for consumers

1. If the customer is a consumer, he shall have the right to revoke his declaration of intention to conclude the contract within two weeks. The revocation need not contain any reason and shall be declared to DN GmbH, Freiburger Str. 1, 38678 Clausthal-Zellerfeld in writing or in return of the service, insofar as this is actually possible. Timely dispatch shall suffice to comply with the deadline.
2. DN reserves the right not to start to perform its services until the two-week revocation deadline has expired.
3. The customer shall bring about the performance of the services by transmitting the information that is necessary for the performance of the services. If the customer sends or transmits the information referred to in the first sentence before the end of the two-week revocation period, he shall be deemed to have given his consent to the performance of the services. As soon as DN has started with the performance of the services by processing the data the right of revocation shall elapse.

§ 4 / Services

1. DN shall perform its services impartially, neutrally and to the best of its knowledge and belief in accordance with the generally accepted rules and with the regulations existing at the time the order is accepted.
2. In so far as is necessary for the proper performance of the services the customer shall obtain information from and make enquiries of the parties involved or third parties and shall inform DN accordingly.
3. The scope of the services to be performed by DN shall be established in writing at the time an order is placed. Partial performance shall also be permitted. If changes and/or additions to the established scope of the order result from the proper execution of the order, they shall also be agreed in writing in advance by the parties. If adherence to the contract cannot reasonably be expected of the customer as a result of the changes and/or additions, the customer shall have the right to withdraw from the contract. However, in such case, the customer shall pay the agreed remuneration or, in the absence of an agreement, equitable remuneration.

§ 5 / Duties of the customer

1. The customer shall provide DN, conscientiously, completely and at no cost, as well as in a timely manner, with all the necessary information and documents for the execution of the order.
2. The customer shall, of his own accord, call attention to all processes and circumstances that could be of significance for the execution of the order.
3. The execution of the order in the absence of fulfilment of Points 1 and 2 above shall be at the sole risk of the customer, provided DN is not partly to blame.

§ 6 / Secrecy

1. DN shall observe compliance with the duty of secrecy. DN shall ensure that neither experts' reports nor other facts or documents relating to the customer and the subject matter of the order that come to its attention during the performance of the services are disclosed, used or forwarded without authorisation.
2. DN may make copies for its own files of written documents that are made available for DN to inspect or for the execution of the order.
3. DN explicitly reserves the copyrights to the services it provides.
4. At the time the order is placed, the scope of the services shall be confirmed by DN in writing. The customer may use the experts' reports drawn up by DN within the scope of the order and the services provided by DN with all the associated details only for the purpose agreed at the time the order was placed.

§ 7 / Payment terms

1. Upon execution of the order or, if applicable, upon submission of the invoice payment shall be due in full immediately, at the latest by the date indicated on the invoice.
2. For the invoicing of the services provided by DN the VAT applicable at the time of the complete execution of the order shall be shown separately and levied in addition to the contractual remuneration.
3. The calculation basis for invoices shall be the currently applicable DN scale of charges, which is known to the customer. This does not apply if a fixed price or another basis of measurement has been explicitly agreed in writing. Any increases in charges must be announced three months in advance. They entitle the customer to cancel the contract as of the date of the price increase with a notice period of one month.
4. Bills of exchange, cheques and payment orders shall be accepted only on account of performance. They shall be considered payment when they have been redeemed. Standard bank expenses shall be borne by the customer.
5. Offsetting payment against, or withholding payment on account of, a counterclaim is excluded unless the counterclaim is uncontested or has been legally established.
6. If the customer is in default with the settlement of an invoice DN may withdraw from the contract or claim compensation in lieu of performance. Without prejudice to the assertion of further loss, DN shall be entitled to default interest of 5% above the basic rate of interest. The customer shall, however, be allowed to prove that DN did not suffer a loss or that the loss suffered by DN is considerably less. The default interest shall be higher if DN can prove that a higher interest rate should be charged.
7. Should DN become aware of facts from which it emerges that the customer is no longer creditworthy, DN shall be entitled to demand payment in cash before the order is executed. In such cases DN may also withdraw from the contract after adequate additional time or demand compensation for non-performance. Without prejudice to the assertion of a greater loss this shall amount to 15% of the remuneration unless the customer proves that no loss or less loss was suffered. This shall also apply in the event of non-compliance with the payment terms, in the event of non-redemption of cheques or bills of exchange, the suspension of payments, the opening of bankruptcy proceedings with regard to the customer's assets or the rejection of the opening of bankruptcy proceedings due to a lack of assets on the part of the customer.
8. Advances on costs may be demanded and/or partial invoices may be issued by DN corresponding to services already performed. If the customer is in default with the settlement of a partial invoice despite being set an extended deadline DN shall have the right to refuse performance of the rest of the contract, to withdraw from the contract or to demand compensation for non-performance.

§ 8 / Deadlines

1. The order deadlines of DN are non-binding, unless a binding deadline has specifically been agreed in writing.
2. Binding terms for the provision of the expert's service and/or services shall begin upon conclusion of the contract. If a payment in advance is agreed or documents of the customer are required, the term shall not begin until the payment in advance or documents are received. The later time shall be authoritative in each case.
3. If a delivery date or a delivery deadline is overstepped DN shall be in default if DN is responsible for the delay in delivery. In the event of force majeure or other unforeseeable impediments for which DN is not responsible there shall be no default in delivery.
4. In addition to delivery, the customer may demand compensation for damage caused by default only if it is proved that DN acted with intent or with gross negligence.
5. With regard to the deadline for the performance of the services, the customer may withdraw from the contract or demand compensation in lieu of performance only in the event of delay in performance on the part of DN or

impossibility of performance for which DN is responsible.

§ 9 / Termination

1. The contract may be terminated in writing by either side at any time for good cause. Except for the case any special contractual provision has been agreed, termination of the contract with notice is excluded.
2. The customer has good cause in particular if DN flagrantly violates its duties as expert despite previously being warned to no avail by the customer.
3. DN shall be entitled to terminate the contract for good cause in particular if the necessary collaboration on the part of the customer is refused, if the customer tries to misrepresent the result of the expert report / service provided by DN in an inadmissible way, if the customer suffers financial collapse or if debtor's fault on the part of DN has caused a delay in performance.
4. Should the contract be terminated for good cause for which DN is responsible, DN shall be entitled to demand remuneration for the part service performed until the time of termination only insofar as the part service is objectively usable for the customer.
5. In other cases, DN shall reserve the right to claim remuneration in the same way as with the performance of the contractual service. The remuneration, taking account of any saved expenses, shall be 15% of the remuneration for the service not yet performed by DN unless the customer proves a smaller volume of work or higher saved expenses.

§ 10 / Warranty

1. Insofar as DN renders services, the parties are in agreement that DN does not owe any specific success but only services and that any decisions that need to be made on the basis of the services rendered shall fall within the decision-making and risk area of the customer alone.
2. Otherwise, should defects occur within the warranty period, DN shall avail itself of the right to subsequent performance. Subsequent performance shall take place, at DN's choice, through the correction of faults (remedial performance) or through reproduction (subsequent delivery). The customer shall have the right, at his choice, to demand reduction of the remuneration or termination of the contract under statutory conditions if and not until subsequent performance is definitively and seriously refused, not carried out in a timely manner or fails. Additional warranty rights are excluded.
3. In the event of a minor breach of contract, in particular in the event of minor defects, the customer shall not be entitled to withdraw from the contract. To the extent that DN is not responsible for a breach of duty lying in a defect, the customer shall not be entitled to withdraw from the contract in this case either.
4. The customer shall bring defects to the attention of DN in writing as soon as they are detected but no later than one year after the goods are handed over.
5. A claim for compensation shall remain unaffected by the absence of guaranteed qualities.
6. All warranty rights shall be excluded if they are not asserted within one year of the transfer of risk (usually at the time of handover).

§ 11 / Liability

1. DN shall be liable for losses – regardless of their legal basis – only if DN, its legal representative or vicarious agent caused these losses through intent or through gross negligence or if DN, its legal representative or vicarious agent negligently violated a duty essential to the contract. In the event of the violation of a duty essential to the contract DN's obligation to pay compensation shall be limited to foreseeable losses resulting from the nature of the contract.
2. Liability for indirect consequential losses, including consequential losses resulting from the nature of the contract, is excluded. In all other cases, the liability of DN shall be limited to the following amounts insured:
 - EUR 500,000.00 for damage to property
 - EUR 250,000.00 for pecuniary damage.
3. The aforementioned exclusions of liability and limitations of liability shall not apply to (1) losses arising from the violation of life, body or health, (2) other losses attributable to a grossly negligent breach of duty on the part of DN or to an intentional grossly negligent breach of duty on the part of a legal representative or vicarious of DN, or to (3) losses arising from a culpable violation of essential contractual rights and duties within the meaning of Section 307 (2) (2) BGB (German Civil Code).
4. The customer shall immediately notify DN of any losses for which DN must pay.
5. Insofar as claims for compensation against DN are excluded, this shall also apply with regard to the personal liability of DN employees.
6. The customer's rights based on warranties pursuant to Clause 10 shall remain unaffected.
7. Claims for compensation that are not subject to the short limitation period pursuant to Section 634a BGB shall become time-barred 3 years after receipt of the expert report / service by the customer.

§ 12 / Concluding provisions

1. The place of performance for all claims arising from this contract shall be the place where DN has its registered office.
2. The exclusive place of jurisdiction for all disputes shall be the place where DN has its registered office, insofar as the customer is a businessman within the meaning of the German Commercial Code (HGB), a legal person under public law or a special fund under public law, or claims are asserted by way of an order for payment procedure. The same place of jurisdiction shall apply if the customer has no place of general jurisdiction domestically, relocates his place of residence or usual abode abroad, or his place of residence or usual abode is unknown at the time the action is filed.
3. In all other cases, for all claims of DN against the customer, the place of residence of the customer shall be regarded as the place of jurisdiction, insofar as the customer is not a businessman.
4. For relations between the parties to the contract, the contract alone shall be binding. The contractual relationship shall be subject to German law. The UN Convention on Contracts for the International Sale of Goods is excluded.
5. Should a provision of these terms and conditions of business be or become ineffective, or should an omission become apparent, the validity of the remaining provisions shall not be affected. The customer and DN undertake in this case to strive to achieve the intended purpose of the contract by agreeing on a replacement provision.

Clausthal-Zellerfeld, January 2009