

## W24 Service GmbH – GENERAL TERMS AND CONDITIONS

### 1. Definitions

Capitalized terms shall have the meaning set forth in the Statement of Work, in the Special Terms and Conditions or as defined below:

**1.1** “Agreement” means the agreement between Customer and W24, documented in the particular Statement of Work, these GTC and the applicable STC(s) (including Annexes).

**1.2** “Business Day” means each day on which banks are open for business to the public in Bavaria, but excluding, in any event, Saturdays and Sundays.

**1.3** “Confidential Information” means all information disclosed by either Party in connection with the Agreement concerning business, affairs, the Goods, research and technologies of the disclosing Party and/or its customers that is not publicly available at the time it is disclosed to, or learned by the receiving Party. To the extent disclosed in connection with the Agreement, Confidential Information includes but without limitation to specifications; data; know-how; formulas; compositions; processes; designs; prints; sketches; photographs; samples; prototypes; inventions; concepts; ideas; past, current and planned research and development; past, current and planned manufacturing or distribution methods and processes; the identity of or other information about actual or potential customers, customer contacts and customer sales strategies; market studies, penetration data and other market information; sales and marketing plans, programs and strategies; sales, costs and other financial data; sources of supply for the Goods, raw materials, and components; price lists; business plans; financial reports and statements; computer software and programs (including object code and source code); databases; internal reports, memoranda, notes, analyses, compilations, studies and other data, information, materials or intangible asset that relate to the disclosing Party’s business and/or Goods. Confidential Information also includes any materials or information that contains or is based on any other Confidential Information, whether prepared by the disclosing Party, the receiving Party or any other person.

**1.4** “W24Solution” means a solution provided by W24 as part of the provision of the Service for the automated processing of technical drawings by way of a so-called Software-as-a-Service (“SaaS”) including improvements, updates, enhancements, error corrections, release notes, upgrades and changes thereto as well as a corresponding programming interface for the connection between the Customer’s systems and W24’s servers.

**1.5** “Customer” means the individual or entity set forth in the Statement of Work.

**1.6** “GTC” means these General Terms and Conditions.

**1.7** “In writing” or “written” also includes text form (Section 126b German Civil Code (BGB)), e.g. via fax, email or EDI, unless a signature is required.

**1.8** “Law” means any and all applicable rules of law, statutes, statutory instruments, directives, regulations, orders and other instruments having the force of law and any applicable

codes of conduct, guidance, directions and/or determinations with which Customer and/or W24 is bound to comply.

**1.9** “Parties” means W24 and Customer.

**1.10** “Party” means either W24 or Customer as the case may be.

**1.11** “W24Services” / “Services” means the services specified in the Statement of Work and the Special Terms and Conditions and owed by W24 under the Agreement.

**1.12** “Specification” means the specifications of Services described and agreed to in the Statement of Work.

**1.13** “Statement of Work” means the document describing the agreement between Customer and W24 which are specific to the Services, supplementing these GTC and the STC, together with any relevant technical documentation.

**1.14** “STC” means special terms and conditions (including Annexes) for services to be provided by W24 which apply in addition to these GTC.

**1.15** “User” means the Customer, employee of Customer, contractor of Customer or any other third person that is authorized by Customer to access the W24Solution.

### 2. General

**2.1** The legal relationship between W24 and Customer shall be governed exclusively by these GTC as well as the applicable STC and the Statement of Work.

**2.2** Supplementary, conflicting or deviating terms are hereby expressly excluded. Any terms set forth by Customer are rejected in whole, unless explicitly accepted in a writing specifically accepting such terms and signed by W24.

**2.3** These GTC and the applicable STC shall also apply in the event that W24 performs its services without reservation in the knowledge of supplementary, conflicting or deviating terms of the Customer.

**2.4** These GTC and the applicable STC shall also apply for all future transactions of this kind with Customer.

**2.5** In case of contradictions between the provisions of these GTC, the STC and the Statement of Work the provisions shall apply in the order listed below:

- Statement of Work
- Special Terms and Conditions
- General Terms and Conditions

**2.6** W24 reserves the right to change these GTC at any time with effect for future Agreements.

**2.7** Customer acknowledges and agrees to be bound by, and comply with, all (i) terms and conditions contained herein; and (ii) all of the foregoing as the same may be amended by W24 from time to time. Customer shall have accepted each and every one of these provisions when it accepts any of the ordered Services.

### 3. Conclusion of Agreement

An individual Agreement between W24 and the Customer is concluded when:

**3.1** W24 and the Customer signed a Statement of Work;

**3.2** W24 confirmed the Customer’s order in writing;

- 3.3** the Customer accepted an offer from W24 without any changes or conditions; or  
**3.4** W24 started with the execution of the order.

#### **4. No Exclusivity**

Unless explicitly agreed otherwise in the relevant Statement of Work, Customer acknowledges and agrees that the Agreement does not constitute an exclusive agreement between Customer and W24. Accordingly, W24 may provide similar or identical services to customers other than the Customer.

#### **5. Scope of Services**

**5.1** W24 will provide W24Services in accordance with the Statement of Work, these GTC and the applicable STC. The Parties agree that W24Services must meet the Specifications in the Statement of Work, but no other, if any, customary or usual requirements.

**5.2** Dates with respect to performance of W24Services are estimated and not binding, unless expressly agreed otherwise in writing.

**5.3** W24 may use third-party contractors to perform its duties. W24 will be responsible for the performance of the services of such third-party contractors to the same extent as for its own employees.

**5.4** The selection of employees/ consultants assigned or deployed to deliver W24Services under an applicable Statement of Work is at W24' sole discretion and W24 reserves the right to replace any employee/ consultant at any time at its sole discretion with an employee/ consultant with equivalent skills.

#### **6. Obligation to Cooperate**

**6.1** The Customer shall inform W24 about all circumstances relevant to the provision of W24Services. Unless expressly agreed otherwise in writing, W24 is not obliged to check data, information or other services provided by the Customer for their completeness and accuracy.

**6.2** Insofar as the Customer's cooperation is required for the provision of W24's services, the customer shall provide these at his own expense. Unless expressly agreed otherwise in writing, W24 shall not reimburse the Customer for any expenses.

**6.3** If any Service, in whole or in part, cannot be provided by W24 due to an issue of the Customer and Customer fails to provide W24 with reasonable advance notice, the time spent by W24 on such Service will be charged to Customer.

**6.4** If the Customer does not, not timely or not properly fulfill its obligations to cooperate, W24 is entitled to charge the customer for the resulting additional expenses. Further claims are expressly reserved.

#### **7. Acceptance**

**7.1** In case the applicable Statement of Work expressly states that the Deliverables are subject to acceptance and does not otherwise specify an acceptance procedure, the following acceptance procedure applies:

**7.1.1** Upon delivery by W24 of a completed Deliverable, Customer shall have the opportunity to accept or reject the Deliverable ("Acceptance Period"), due to a material defect based on the Acceptance Criteria set forth in the Statement of Work for that Deliverable. The Acceptance Period shall be set forth in the Statement of Work.

**7.1.2** If the relevant Deliverable passes the Acceptance Criteria set forth in the Statement of Work, Customer shall accept the Deliverable and Customer shall sign an Acceptance Protocol documenting such acceptance. Acceptance shall not be unreasonably withheld by Customer. If Customer notifies W24 that it rejects the Deliverable due to a material defect, Customer shall provide written notice, within the Acceptance Period, specifying the basis of the material defect.

**7.1.3** W24 shall have a reasonable period to cure and redeliver the Deliverable for an additional Acceptance Period. If Customer fails to reject any Deliverable within the Acceptance Period, in a written document specifying the material defect, Customer shall be deemed to have accepted such Deliverable as of the last day of the Acceptance Period.

**7.1.4** Upon acceptance of a Deliverable, all Services associated with such Deliverable shall be deemed accepted.

**7.1.5** Customer shall not make productive use of a Deliverable, unless it has been accepted by Customer (either expressly or by passage of time) and in the event that it does make any use of a Deliverable without acceptance, Customer shall be deemed to have accepted such Deliverable as of the date of its first productive use.

**7.1.6** In the event that Customer raises an objection or rejects the Deliverable, the Deliverable shall not be deemed to be accepted unless Customer has made productive use of the same.

**7.1.7** If the Deliverable is rejected by Customer, Customer shall immediately cease any and all use of the Deliverable.

**7.1.8** If Customer makes use of any parts of the Deliverable before Acceptance pursuant to this clause, except for testing purposes in accordance with the acceptance testing, the Deliverable will be deemed to have been accepted on the date of such first use.

#### **8. Payment; Taxes**

**8.1** Customer agrees to pay the fees and charges for the W24Services (collectively, "Fees") as set forth in the Statement of Work in accordance with the provisions set out therein.

**8.2** If payments are made monthly, the monthly subscription fee will be invoiced in advance. For Agreements that start in the middle of a calendar month, the first month's subscription fee is calculated pro rata. Formula: Provisioning Fee \* (days left in the month) / (365/12).

**8.3** Fees are exclusive of all applicable sales, VAT or other taxes or duties and Customer shall pay all such taxes.

**8.4** W24 will be entitled to deduct withholding tax from payments received from Customer as required for any domestic or foreign location where such taxes may be required to be collected or withheld. If withholding tax is applicable, W24 will provide Customer with withholding tax receipts from tax authorities.

**8.5** Invoices shall be paid within fifteen (15) days of receipt, unless otherwise expressly agreed in the Statement of Work.

**8.6** Any payment not received from Customer by the due date shall accrue interest (except with respect to charges then under reasonable and good faith dispute) of nine (9) percent points from the date such payment is due until the date paid.

**8.7** If any undisputed payment is delinquent by more than thirty (30) days after Customer's receipt of written notice of late payment from W24 and such suspension shall continue until payment of all undisputed amounts owed are received, W24 is entitled to terminate the respective Agreement and/or withdraw from it. Further claims of W24 remain unaffected.

**8.8** Further terms of payment may result from the STC and from the Statement of Work.

#### **9. Right of Retention; Assignment; Offset**

**9.1** Customer is only entitled to assert a right of retention insofar as his counterclaim is undisputed, legally established or ready for decision.

**9.2** No Party shall assign any of its obligations under the Agreements without the prior written consent of the other Party, however W24 shall be entitled to assign its rights and obligations as set forth in the Statement of Work. To the extent that W24 assigns to third parties any of its obligations set forth in any Agreement, W24 shall remain fully responsible for such obligations and for all acts or omissions of its assignees or agents.

**9.3** The Customer may only offset against claims that are undisputed, legally established or ready for decision.

#### **10. Warranty**

**10.1** W24 expressly represents and warrants to Customer that:

**10.1.1** Services provided hereunder shall be performed by W24 in a professional manner by qualified personnel, trained and skilled in the performance of the specific services involved;

**10.1.2** it is fully authorized to license to Customer the W24Solution in accordance with the terms of these GTC and the STC and that the W24Solution does not require any license to use third party Solution.

**10.2** Customer hereby expressly represents and warrants to W24, that:

**10.2.1** it has the full right, power and authority to enter into Agreements, and the person executing this Agreement on behalf of Customer is authorized to do so;

**10.2.2** the Agreement is binding on Customer and enforceable against Customer in accordance with its terms;

**10.2.3** transactions entered into pursuant to the Agreements will not violate any applicable laws to which Customer is subject or any agreement to which Customer is subject or a party;

**10.2.4** all information provided by Customer to W24 preceding the Agreement is true and correct and Customer shall immediately notify W24 of any change in such information; and

**10.2.5** Customer will not use and/or allow third parties to use the W24Solution or its Deliverables for fraudulent or illegal purposes. Customer further represents and warrants to W24 that Customer shall not sell, export, dispose of, license, rent, transfer, disclose or otherwise provide the Deliverables to any third party, whether directly or indirectly, with knowledge or reason to know that the third party or any other party will engage in the activities described above. Customer further represents, warrants, and covenant that Customer will comply fully with all relevant export laws and regulations (collectively "Export Controls"). Without limiting the generality of the foregoing, Customer will not export, direct or transfer the Deliverables to or use the Deliverables in any destination, person or entity restricted or prohibited by Export Controls.

## 11. Defects

**11.1** Customer acknowledges that the W24Solution is a highly-volatile product which can cease to function as described herein, in the STC and/ or in the Statement of Work at any time for reasons beyond W24's control (mostly due to third-party updates/patches being released). Further, the Customer acknowledges that the provision and use of the W24Solution may be subject to restrictions with regard to the current state of the art beyond the scope of W24's control. This relates in particular to the availability of data connections provided by carriers, the network and Internet access. In individual cases, the non-availability of the network can lead to the W24Solution not being available as the necessary data transfer cannot occur. Hence, W24 does not warrant that the operation of the W24Solution will be at all times uninterrupted or error-free.

**11.2** Unavailability, suspension or termination of W24Services, or any other Service performance issues shall not be deemed a defect if such

**11.2.1.** are caused by factors outside of W24's reasonable control, including any force majeure event or Internet access or related problems beyond the demarcation point of W24Services;

**11.2.2.** result from any voluntary actions or inactions from the Customer or any third party;

**11.2.3.** result from the Customer's equipment, software or other technology and/or third-party equipment, software or other technology (other than third party equipment within the direct control of W24); or

**11.2.4.** arise from W24's suspension and termination of the Customer's right to use the W24 Services in accordance with the Agreement, provided that W24 is not solely responsible for any of the above.

**11.3** Should the quality of the W24Services deviate from the contractually agreed quality or should its intended use by the Customer infringe the rights of third parties, the Customer shall notify W24 about this in writing without undue delay. The notification must clearly describe the deviation, in particular with regard to the circumstances, the effects and possible causes. Customer shall take all reasonable measures to facilitate the identification and rectification of the deviation by W24.

**11.4** W24 shall remedy defects within a reasonable time, unless otherwise agreed by the Parties in writing. Remedy of defects can be carried out at W24's discretion by rectification, replacement delivery or delivery of a subsequent version, provided that a replacement delivery or the delivery of a subsequent version is not unacceptable for the Customer. W24 reserves the right to provide workarounds or temporary fixes.

**11.5** If W24 is not able to remedy a defect within a reasonable time, Customer is entitled to terminate this Agreement with a notice period of two (2) weeks to the end of the calendar month. Compliance with this notice period is not required if

the Customer cannot reasonably be expected to comply with it, considering all circumstances of the individual case and weighing up the mutual interests of the parties.

**11.6** Customer shall not be entitled to assert any rights if the defect was caused by an unauthorized modification or use contrary to the applicable terms of the Agreement by the Customer.

## 12. Limitation of Liability

**12.1** W24 shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to W24 by Customer or any actions taken by W24 at Customer's direction.

**12.2** Subject to clause 12.3 and clause Error! Reference source not found., neither Party will be liable for any indirect or consequential loss, damage, cost or expense of whatever kind including (without limitation) loss of production, loss of or corruption to data, loss of profits arising in the normal course of business or of contracts, loss of operation time and loss of goodwill or anticipated savings, even if such Party has been advised of their possibility.

**12.3** W24 liability for damages caused by slight negligence, irrespective of its legal ground, shall be limited as follows:

**12.3.1.** W24 shall be liable up to the amount of the foreseeable damages typical for this type of contract due to a breach of material contractual obligations;

**12.3.2.** W24 shall not be liable due to a slightly negligent breach of any other duty of care applicable.

**12.4** With respect to clause 12.3 each Party's total aggregate liability for all damages and losses that arise under or in connection with the Agreements shall not exceed the amounts paid under the Agreement.

**12.5** The aforementioned limitations of liability do not apply to liability under the Product Liability Act, any damage which is a result of willful misconduct, fraud or gross negligence and liability for culpably caused injury to life, limb or health. Furthermore, the limitations of liability shall not apply if and insofar as W24 has assumed a specific guarantee.

## 13. Indemnification

**13.1** W24 and Customer (each an "Indemnifying Party") will indemnify, defend and hold harmless the other Party and its shareholders, its directors, officers, employees, affiliates and agents ("Indemnified Party(-ies)") from all Claims, damages, liabilities, costs and expenses, including actual, out-of-pocket reasonable attorneys' fees and expenses, relating to:

**13.1.1.** the death or personal injury of third parties, including invitees or employees of the Indemnified Party, in any way resulting from the negligent or willful acts or omissions of the Indemnifying Party or any of its employees, consultants, subcontractors, agents and/or representatives;

**13.1.2.** the damage or destruction of real or tangible personal property of the Indemnified Party or third parties, including invitees or employees of the Indemnified Party, in any way resulting from the negligent or willful acts or omissions of the Indemnifying Party or its employees, consultants, subcontractors, agents and/or representatives;

**13.1.3.** Claims asserted by any employee or former employee of a Party, attributable to any period while the employee was employed by the Party and arising out of the employer Party's employment of the employee, including Claims for (i) a violation of Law for persons of a protected class by the employer Party, including unlawful discrimination, (ii) any work-related injury or death caused by the employer Party, except if the Claim can be covered by workers compensation coverage, (iii) accrued employee benefits not expressly provided for by the other Party, (iv) any representations, oral or written, made by the employer Party to the other Party's employees, and (v) any other aspect of the employees' employment relationship with the employer Party or the termination of the employment relationship (including Claims for breach of an employment contract).

## 14. Testimonial

The Customer grants W24 the right to mention the Customer as customer or partner on W24's website with company name, logo and link to the Customer's website. W24 can freely decide whether and when to add or remove the mention of the Customer as customer.

## 15. Excusable Delays (Force Majeure)

**15.1** Neither Party hereto shall be responsible for delays or failures in performance resulting from acts beyond its reasonable control and without its fault or negligence. Such excusable delays or failures may be caused by, among other things, war (including preparation period), strikes, official orders, riots, rebellions, accidental explosions, floods, storms, acts of God and similar occurrences.

**15.2** The Party claiming such force majeure condition shall notify the other Party as promptly as practicable after such Party becomes aware of the occurrence of such force majeure condition. If there is any such delay, then the periods for the completion of the Parties obligations hereunder shall be automatically extended by the period of such delay.

**15.3** Notwithstanding the foregoing, either Party may terminate the Agreement in the event that the other Party is unable to fulfill its obligations pursuant to the Agreement because of such excusable delays which continue in effect for thirty (30) consecutive days.

**15.4** Notwithstanding the provisions hereof, in every case, the Party claiming excusable delay shall exercise all reasonable efforts to mitigate the extent of such delay or failure.

## 16. Data Protection

If and insofar as W24 is required to process personal data on behalf of Customer and/or third parties in connection with the provision of W24Services, W24 and Customer shall enter into a data processing agreement.

## 17. Confidentiality

**17.1** During the term of the Agreement, the Parties acknowledge that Confidential Information may be mutually disclosed.

**17.2** The Parties agree that Confidential Information shall be used only for the sole purpose of discussions or implementation of the Agreements and shall not disclose such Confidential Information, whether directly or indirectly, to any third party without prior written approval of the other Party.

**17.3** Customer and W24 shall not without the other Party's prior written consent communicate or disclose any part of the Confidential Information of the other Party to any third party except:

**17.3.1.** only to those employees and sub-contractors on a need to know basis who are directly involved in the use of the W24Solution and who are subject to confidentiality undertakings that are at least as restrictive as those described herein;

**17.3.2.** each Party's auditors, professional advisers and any other persons or bodies having a legal right or duty to have access to or knowledge of the Confidential Information in connection with the business of the Party.

**17.4** Each Party shall ensure, prior to disclosure of any Confidential Information, that all persons and bodies mentioned in clause 17.3 are aware that the Confidential Information is confidential and that they owe a duty of confidence to W24 or Customer, as applicable.

**17.5** Such restrictions on the use or disclosure of Confidential Information shall not apply to information which:

**17.5.1.** prior to the receiving Party's receipt thereof was publicly available or in the receiving Party's possession from a source other than the disclosing Party, or

**17.5.2.** after the receiving Party's receipt thereof becomes publicly available other than as a consequence of a breach of the receiving Party's obligations hereunder, or

**17.5.3.** is independently developed by the receiving Party and such independent development can be proved without doubt, or

**17.5.4.** is required to be disclosed pursuant to statutory regulations or regulations under administrative law or by reason of a judicial decision that cannot be appealed, and the receiving Party makes this requirement known to the disclosing Party without undue delay and the extent of the disclosure is restricted as far as possible; the receiving Party will ensure confidential handling of the Confidential Information by the court or the authorities to the best of its ability.

**17.6** Each Party agrees to exercise reasonable care in protecting the Confidential Information to prevent the disclosure of such Confidential Information to outside parties.

## 18. Entire Agreement

These GTC together with the applicable STC as well as the relevant Statement of Work constitute the entire agreement between the Parties and supersede all prior or contemporaneous agreements and understandings between the Parties relating to the subject matter hereof.

## 19. Written Form

Any modification of these GTC, the STC and the Statement of Work shall be valid only if in writing and signed by the Parties. A contractual waiver of this clause must also be in writing and signed by the Parties.

## 20. Notices

**20.1** All notices which are required to be given under these GTC, the STC and/ or the Statement of Work will be in writing and will be sent to the address of the recipient set out in the Statement of Work, or such other address as the recipient may designate by notice given in accordance with this clause. Any such notice may be delivered personally a registered letter with acknowledgment of receipt or email transmission and will be deemed to have been received:

**20.1.1.** by hand delivery - at the time of delivery;

**20.1.2.** by a registered letter with acknowledgment of receipt - at the time of receipt;

**20.1.3.** by email - on the next business day after dispatch.

## 21. Waiver

No delay or failure by either Party to exercise any of its powers, rights or remedies under these GTC, the STC and/or the Statement of Work will operate as a waiver of them, nor will any single or partial exercise of any such powers, rights or remedies preclude any other or further exercise of them. Any waiver to be effective must be in writing. The remedies provided in these terms are cumulative and not exclusive of any remedies provided by Law.

## 22. Governing Law

The validity, construction and enforcement of these GTC (including this Section), the STC, the Statement of Work and the interpretation of the rights and duties of the Parties hereto shall exclusively be governed by, and be construed in accordance with, the laws of the Federal Republic of Germany, without regard to principles of conflicts of laws and without regard to the UN Convention on the Sale of Goods (CISG).

## 23. Dispute Resolution and Jurisdiction

**23.1** The Parties will use their reasonable best efforts to resolve any dispute hereunder through good faith negotiations. A Party must submit a written notice to the other Party and any such dispute that cannot be resolved within forty-five (45) calendar days of receipt of such notice (or such other period to which the Parties may agree in writing) may be submitted to the courts of Munich, Germany.

**23.2** Any and all disputes, claims or litigation arising from or related in any way to these GTC, the STC and/ or the Statement of Work, including its formation, shall be exclusively submitted to and resolved by the courts of Munich, Germany.

## 24. Severability

If any provision of these GTC, the STC and/ or the Statement of Work should be or become wholly or partially void, ineffective or unenforceable, the validity, effectiveness and enforceability of the other provisions shall not be affected thereby. Any such invalid, ineffective or unenforceable provision shall be deemed replaced by such valid, effective and enforceable provision as comes closest to the economic intent and purpose of the invalid, ineffective or unenforceable provision as regards subject-matter, extent, time, place and scope. The aforesaid shall apply mutatis mutandis to any gap in this Agreement.