

# **General Terms and Conditions of Sale, Delivery and Payment**

of CTS GmbH,  
Lotzenäcker 21  
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## **§ 1**

### **Scope of validity, exclusion of the validity of contradictory terms and conditions**

- (1) All offers, deliveries and services provided by our company are made on the basis of these General Terms and Conditions of Sale, Delivery and Payment (hereinafter “**GTCSDP**”). The following GTCSDP apply only to entrepreneurs as defined by sect. 14 BGB (German Civil Code), legal entities under public law or special funds under public law (hereinafter “**Customers**”). They also apply without further explicit reference to future offers, deliveries and services to the Customer.
- (2) Our terms and conditions apply exclusively. The validity of contradictory or supplementary terms and conditions of the Customer is explicitly objected to.

Our terms and conditions also apply if we render delivery to the Customer without reservation although we have knowledge of contradictory terms and conditions of the Customer or terms and conditions of the Customer that contradict our terms and conditions.

- (3) Our GTCSDP apply to permanent business relationships, even without further explicit reference to future offers, deliveries and services to the Customer.

## **§ 2**

### **Conclusion of contracts, scope of delivery, prohibition of assignment**

- (1) Unless otherwise agreed in writing, our offers are subject to confirmation and non-binding for us. Conclusions of contract and agreements will not become binding until we have issued a written order confirmation or made delivery. The same will also apply for supplements, amendments or side agreements.
- (2) Customer orders will be deemed to be binding contractual offers as per sect. 145 BGB.
- (3) Unless otherwise specified in the order, we are entitled to accept the order within three weeks.
- (4) Unless specifically agreed otherwise, the contract will be concluded subject to correct and timely deliveries to us by our own suppliers. This only applies in the event we are not re-

sponsible for non-delivery, in particular in cases where we enter into a congruent covering transaction with our supplier. The Customer will be informed without delay regarding non-availability of the service. Any return services that have already been performed will be reimbursed.

- (5) All information regarding our products, in particular illustrations, stated measurements, and services and other technical information included in our offers and printed materials, should be viewed as referring to approximate average values. Customary industry tolerances for quantities, weights, number of units and dimensions are explicitly reserved.
- (6) Should, following the end date of an offer, changes be made to products within the scope of ongoing technical further development, we may deliver the technically modified model. When doing so, we are entitled to deviate from illustrations, drawings, descriptions, colours, and dimension, weight, quality and other information, providing that, taking both parties' interests into consideration, these deviations are reasonable for the Customer. The Customer is obliged to inform us if we cannot deviate from information and specifications under any circumstances when placing the order.
- (7) Our written order confirmation is definitive for the scope of delivery and service; if this confirmation is not available, our offer will be definitive.
- (8) We do not check the correctness of the Customer information and specifications on which our offer or order confirmation is based.
- (9) All agreements, side agreements, assurances and contract amendments must be made in writing. This also applies for any waiver of the requirement for the written form.
- (10) The documents on which the offer is based, such as drawings, illustrations, descriptions, and weight and dimension information, only become integral parts of the contract if this is explicitly agreed in writing. We reserve the right to make any changes and modifications that do not materially impair the purpose of the contract and the delivery.
- (11) All offer documentation, plans, drawings, cost estimates, documents and documentation – also in electronic form – on which our offer is based remain our property and may not be retained, copied or otherwise reproduced, or made accessible to third parties by the Customer. At our request, these items must, at our discretion, either be handed over to us without delay or erased. Any and all property rights to this documentation to our benefit will remain unaffected, also if we provide the documentation to the Customer. The Customer is not entitled to exploit or forward sample copies, specimens or models.
- (12) We reserve the right to change the purchase item during the delivery period insofar as the purchase item and its appearance are not fundamentally altered and contractually compliant use of the delivery by the Customer is not restricted to an unreasonable extent.
- (13) The Customer is not entitled to assign claims against us or rights resulting from the business relationship to third parties or to transfer such claims to third parties without our explicit written permission. The same applies to direct claims and rights against us under law that are connected to the contractual relationship.

The Customer will obtain the permits required to execute and operate the delivery items at their own cost. The Customer must reimburse us for any and all expenses incurred because we provide assistance with this.

### **§ 3**

#### **Rights of the Customer to standard software**

- (1) The following terms and conditions apply for our software products and the related usage rights. In addition to this, section 12 applies for material defect liability regarding software.
- (2) The Customer recognises licence terms and conditions upon receipt of the delivery or service and at the latest upon installation of the software.
- (3) Insofar as the scope of delivery includes software, we grant the Customer a non-exclusive right to use the supplied software including documentation. The software is provided for use with the corresponding delivery item.
- (4) The Customer may only reproduce, edit or translate the software or convert it from object code to source code to the extent permitted by law (sect. 69a ff. German Copyright Act (UrhG)). The Customer undertakes not to remove the manufacturer information – in particular copyright notes – or to change it without our prior explicit written consent.
- (5) We / the software supplier retain all other rights to the software and documentation, including copies. Granting of sub-licences is not permitted.

### **§ 4**

#### **Property rights and tools**

- (1) We retain property rights and copyright and all other industrial property rights to specimens, cost estimates, application suggestions, drafts, drawings, models, templates and other documentation and similar information of a physical and non-physical nature – also in electronic form. These items may not be made accessible to third parties and must be returned at our request.
- (2) Insofar as and to the extent that we deliver custom-made products and commodities as per specifications, drawings, specimens or other documentation provided by the Customer, we are only liable for delivery as per these specifications. The Customer will, in particular, warrant that this does not infringe any third-party property rights. In the event of a claim, the Customer is obliged to hold us harmless and to indemnify us without delay. The Customer must reimburse us for any costs (including legal costs) incurred as a result of a claim.
- (3) Tools that are manufactured by us to produce the delivery item remain our property unless anything else is explicitly agreed, even if the Customer is charged for some of the costs.

The Customer will not acquire any claim to transfer of ownership of these tools, even after remunerating us in full for the cost of manufacturing them.

- (4) Copies or other reproductions may only be made for the agreed purpose. No originals or reproductions may be handed over to third parties or made accessible to them in any other way.

## § 5

### **Third-party industrial property rights and copyright rights; defects of title**

- (1) Insofar as not otherwise agreed, we are only obliged to make delivery free from third-party industrial property rights and copyrights (hereinafter together “**Property Rights**”) in the Federal Republic of Germany. Insofar as a third party asserts a justified claim against the Customer on the grounds that deliveries made by us and used in a contractually compliant manner infringe on Property Rights, we will be liable to the Customer as specified by the following paragraphs (2) to (8).
- (2) We will, at our discretion and cost, either acquire a usage right for the relevant deliveries; modify the goods in such a way that the protective right is no longer infringed or replace the goods. Should this not be possible for us under reasonable conditions, the Customer will be entitled to their statutory rights of withdrawal and reduction.
- (3) Our obligation to pay damages is based on section 13 below.
- (4) The above-mentioned obligations to which we are subject only apply if the Customer informs us in writing and without delay regarding claims being asserted by third parties; does not recognise the infringement and all defensive measures and settlement negotiations are reserved for us. Should the Customer refrain from using the goods in question in order to minimise the damage or for other material grounds, they will be obliged to inform the third party that refraining from use is not associated with any recognition of the infringement of Property Rights.
- (5) Claims by the Customer are excluded insofar as the Customer is responsible for the infringement of the Property Rights.
- (6) In addition to this, claims by the Customer are excluded insofar as the infringement of the Property Rights results from special specifications of the Customer; from an application that could not have been foreseen by us or from the fact that the Customer has modified the goods in question or is using them in combination with products that were not supplied by us.
- (7) In the event of any other defects of title the provisions of sections 11 and 12 of these GTCSDP will apply accordingly.
- (8) Additional claims or claims that exceed the Customer’s claims against us and our vicarious agents on the grounds of defects of title as regulated by sect. 5, 11 and 12 of these

GTCSDP are excluded.

## § 6

### **Prices; payment; rights of offsetting and retention**

- (1) Insofar as not otherwise agreed, delivery is charged at our prices that are valid on the day of delivery. The prices stated apply for deliveries “ex works”, 2020 Incoterms, and are net prices plus the relevant legal rate of value added tax, even if this is not separately identified; plus costs for packaging, freight, carriage, setting up, assembly, start up, installation, postage, insurance, customs duties, applicable sales taxes, possible fees for bank and payment transactions, and other ancillary costs.
- (2) We are entitled to demand a reasonable advance payment upon conclusion of the contract. Insofar as nothing else has been agreed, the following payment terms apply:  
30 % of the order value upon receipt of the order confirmation  
70 % upon delivery or notification of readiness for dispatch.
- (3) Services that are not an integral part of the agreed scope of delivery will, in the absence of deviating agreements, be carried out on the basis of the relevant current general price lists or additional charges/price reductions.
- (4) Depending on the progress of an order, we may request reasonable part payments for partial services that have already been performed.
- (5) All payments must be made in EUR. The Customer bears any exchange rate risks.
- (6) Insofar as not otherwise agreed, our invoices are payable immediately and without any deductions.
- (7) The Customer is in default of payment at the latest 30 days after receipt of the invoice unless default commences earlier for some reason (e.g. a payment reminder, a dunning letter or the agreement of a shorter payment period or a payment deadline based on a calendar date). We will charge annual default interest equivalent to 9 percent above the base interest rate on our claim from the date that default commences.
- (8) We are entitled to demand interest of 5 % above the relevant base interest rate on payments that are made after their due date, without any prior dunning letter being required.
- (9) In the event of payment default, we reserve the right to charge a fixed sum of EUR 40 for late payment. Further contractual or statutory rights remain unaffected by this.
- (10) In the case of payment arrears, also in connection with other contractual relationships between the Customer and us, we are entitled to make further deliveries dependent on full clearance of the payment arrears.
- (11) In the event of failure to comply with payment terms; the submission of an application to initiate insolvency proceedings or settlement proceedings against the Customer's assets; or

circumstances becoming known or clear that, in our sound commercial judgement, give reason to doubt the Customer's creditworthiness as well as such facts that were already in existence upon conclusion of the contract, however were not known to us or could not have been known to us, we are, in such cases and without prejudice to further statutory rights, entitled to cease further work on current orders or deliveries and demand advance payment or the provision of securities that are acceptable to us for deliveries that are still outstanding and, following the expiry of a reasonable period of grace for the provision of such securities – without prejudice to further statutory rights– to withdraw from the contract. The Customer is obliged to reimburse us for all damages that are incurred as result of non-performance of the contract.

- (12) All our claims will become due immediately upon the date our Customer defaults on payments; ceases making payments or an application is made to initiate insolvency proceedings against the Customer's assets. This also applies if payment targets have been agreed or, for any other reason, claims are not yet due. Furthermore, this applies for any bills of exchange that we accept, irrespective of when the bills mature.
- (13) Insofar as no other written agreement has been made, we are entitled to adjust prices and/or freight tariffs insofar as our costs for wages and salaries; raw materials or process materials; energy costs; freight costs and customs duties or other materials increase. This right also applies for deliveries and services resulting from a continuous obligation.
- (14) Offsetting against counterclaims of the Customer that are disputed, not legally established, not yet ruled on and not recognised by us is excluded. Notifications of defect made by the Customer will not influence either the obligation to pay or the due date and the Customer waives the assertion of a right to refuse performance respectively a right of retention unless we respectively our legal representatives or vicarious agents are guilty of gross breaches of contract or the counterclaims on which the Customer bases their right to refuse performance or right of retention are undisputed, legally established or ready to be ruled on and are based on the same contractual relationship.
- (15) Cheques and bills of exchange are only accepted as conditional payment following prior written agreement. The Customer must bear all costs and interest that we incur as a result of such a payment.

## § 7

### **Delivery deadline, partial deliveries, quantity deviations**

- (1) The delivery time is based on the agreements made between the contractual parties.
- (2) Unless anything else is explicitly agreed in writing, the agreed delivery deadline is a target delivery deadline. We will strive to meet non-binding or approximate dates (e.g. ca, around) to the best of our abilities.
- (3) An agreed delivery date commences at the earliest upon conclusion of the contract, however not before full receipt of any documentation that the Customer must provide, such as drawings that are approved by the Customer; clearance of documentation that must be ob-

tained; permits; the information that is required to execute the order; clarification of all commercial and technical issues between the contracting parties; and performance of all obligations by the Customer, e.g. payment of an agreed advance payment or of payments that are due for previous deliveries.

- (4) Compliance with the delivery deadline is subject to correct and timely deliveries to us.
- (5) In the case of “ex works”, Incoterms 2020 deliveries, the delivery deadline will be deemed to have been met if the purchase item is released and ready for dispatch within the agreed period and the Customer is notified accordingly. In the case of sales to a destination specified by the Customer, the delivery deadline will be deemed to have been met if the purchase item is handed over to a freight forwarder within the agreed period or is ready for handover but cannot be handed over for a reason for which we were not responsible.

Insofar as we are unable to comply with binding delivery dates for reasons for which we are not responsible (non-availability of the service), we will inform the Customer of this without delay and simultaneously notify them of the expected new delivery date. Should the service also not be available during the new delivery period, we are entitled to withdraw from the contract in whole or in part; we will reimburse the Customer for any return services that have already been performed. The service is not available if, for example, our supplier does not make timely delivery to us; if we have entered into a congruent covering transaction; there are other disruptions to the supply chain, such as force majeure; or if, in a specific case, we are not obliged to carry out procurement.

- (6) If acceptance of the goods or shipment is delayed for a reason for which the Customer is responsible, we are entitled, after the setting and expiry of a 14-day period of grace and at our discretion, to demand immediate payment of the purchase price or to withdraw from the contract or to reject performance and demand damages instead of full performance. The deadline must be set in writing. It is not necessary for the corresponding written document to refer to the rights resulting from this clause. In the event of a claim for damages, the damages payable will be equivalent to at least 15 % of the net delivery price. Both parties reserve the right to prove that the sum of the damages deviates from this or that there are no damages. Should a 14-day period of grace be set and expire without success, we are entitled to otherwise dispose of the delivery item and to deliver to the Customer within a reasonable, extended period of time.
- (7) Should we be in default of delivery, the Customer will, after a reasonable period of grace has been set and expired without success, be entitled to withdraw from the contract or, insofar as the Customer has an interest in a partial delivery, to withdraw from the part of the contract that has not yet been performed. Should we already have performed part of the services that we are obliged to perform, the Customer may only withdraw from the entire contract if they can prove that they have no interest in the partial services that have been performed. Withdrawal is excluded if the Customer is in default of acceptance. Further claims of the Customer - in particular claims for damages, also for consequential damages - are excluded insofar as sect. 13 below does not provide otherwise.
- (8) We will not be in default for as long as the Customer is in default of performance of obligations to us, also including obligations arising from other contracts.



- (9) Deliveries before the delivery date and partial deliveries are permitted insofar as the Customer can reasonably be expected to accept this.
- (10) Subject to other written agreements, acceptance – insofar as this is foreseen in the contract or by law – will be deemed to have taken place within 10 days of the delivery.

## **§ 8**

### **Force majeure**

- (1) Cases of force majeure, in particular, but not limited to, riot, strike, war, flood, lockout, fire, epidemics, pandemics, plagues, confiscation, boycott, legal or official orders and restrictions, or incorrect or late delivery by our suppliers, and other external, unforeseeable, extraordinary events that cannot be prevented even by the utmost care and affect us or our suppliers; make our delivery obligations unreasonably difficult or impossible and for which we are not responsible, will extend the delivery obligations by the time the cases or events last, including a reasonable recovery time, insofar as we cannot fulfil our delivery obligation despite taking measures that can reasonably be expected.
- (2) Extension of the delivery and performance obligations as per para. (1) above also applies if these cases or events occur at a time when we are in default.
- (3) Should the delivery and performance obligations be extended for a reasonable period of time due to such cases or events as per para. (1), each party will be entitled to withdraw from the contract when these extended delivery and performance obligations expire. Should the Customer have an interest in partial deliveries, they may also withdraw from parts of the contract. Insofar as we have already made partial deliveries and/or performed part of the services, the Customer may only withdraw from the entire contract if they can prove that they have no interest in a partial delivery and/or service by us. Further statutory or contractual rights regarding withdrawal remain unaffected by this.
- (4) The assertion of claims for damage by the Customer in the event of para. (1) above is excluded.

## **§ 9**

### **Transfer of risk, shipping, packaging**

- (1) Insofar as not otherwise agreed, we choose the packaging, type of transport and transport route.
- (2) In the absence of contradictory agreements, our deliveries will be made “ex works”, Incoterms 2020.
- (3) At the Customer’s written request the goods will be insured against the risks specified by the Customer. The customer will bear the corresponding costs.



- (4) Insofar as not otherwise agreed, the risk of the delivery's accidental destruction and accidental deterioration will be transferred to the Customer when they are notified that the product can be collected respectively when the Customer is notified that the product is ready for dispatch and has been released. This also applies if we take on additional services such as loading, transport or unloading. Should the dispatch of the items be delayed for reasons for which the Customer is responsible, the risk of accidental destruction will be transferred to the Customer when the goods have been made ready for shipment and the Customer is notified that the shipment has been made ready.
- (5) Subject to para. (4) above, risk - including the risk of confiscation - will, in all cases, be transferred to the Customer when the delivery item is handed over to the transport person, also in the case of freight-paid delivery. This also applies if we transport the goods ourselves or have them transported, even if we have taken on transport at our own cost or carriage. Should dispatch be delayed for reasons relating to the Customer's person, risk will be transferred to the Customer as soon as we notify them that the delivery item is ready for dispatch.
- (6) Insofar as it has been agreed that we will bear the risk of accidental destruction and accidental deterioration of the delivery items, the Customer is obliged to check the shipped goods for external transport damage in the presence of the transporter as soon as the goods arrive. The Customer is obliged to notify the transporter of externally apparent losses or damages to the delivery item at the latest upon delivery and to provide sufficiently clear identification of the loss or damage when doing so and to inform us of this in writing without delay. Losses or damages that are not externally apparent must be reported to us in writing within 5 calendar days. In addition to this, the provisions of sect. 438 German Commercial Code (HGB) and the obligations to report defects as per sect. 11 para. (4) above also apply.
- (7) Insofar as an acceptance inspection has been agreed, it is definitive for the transfer of risk. For the rest, the statutory legal provisions of work and service contracts will also apply for any acceptance inspection of goods that has been agreed. The handover or acceptance inspection will also apply if the Customer is in default of acceptance. In the case of a contractually agreed or legally owed acceptance inspection the Customer is obliged to accept the ordered goods insofar as these goods do not have any obvious defects.
- (8) Should the Customer default on acceptance; fail to carry out an act of cooperation or our delivery be delayed for other reasons for which the Customer is responsible, we will be entitled to demand compensation for the damages that result from this, including additional expenses (e.g. storage costs). Fixed-sum compensation of 0.5 % of the net price per calendar week will be charged for this, up to a maximum total sum of 5% respectively 10% in the case of final non-acceptance, beginning on the delivery deadline date respectively– in the absence of a delivery deadline – upon notification that the goods are ready for dispatch.
- (9) In the event of the cases stated in para. (8) above the right to prove that damage is higher and our statutory claims (in particular compensation for additional expenses, reasonable compensation, termination) will remain unaffected. The fixed sum must, however, be offset against further monetary claims. The Customer is permitted to provide proof that we have

not suffered any damages at all or only significantly lower damages than the aforementioned fixed sum.

- (10) Insofar as the requirements of para. (8) are met, the risk of accidental destruction or accidental deterioration of the purchase item will be transferred to the Customer if they default on acceptance or payment.
- (11) In the case of call orders we may charge storage fees to the sum of 0.75 % of the net price that the Customer has defaulted on. In addition to this, we may, insofar as not otherwise agreed, set a one-month period of grace for acceptance inspections, starting six months after the date of the order confirmation, and then issue an invoice for the unaccepted goods or service and charge reasonable storage fees until the acceptance inspection takes place. The Customer will, however, reserve the right to provide proof that their default of acceptance has not caused any damages or has only caused significantly lower damages.
- (12) Should the shipment be delayed because we assert our right of retention because the Customer has defaulted on full or partial payment or for any other reason for which the Customer is responsible, risk will be transferred from the date the Customer is notified that the goods are ready for dispatch.
- (13) Where the purchased goods are exported the Customer is obliged to obtain all documents required for export (e.g. export and customs authorisations, etc.) at their own cost. We are not liable for ensuring that export of the goods is legally permitted or that they comply with statutory and technical regulations in the import country. Furthermore, we are not liable for ensuring that the goods correspond to the current state of technology in the import country.

## **§ 10**

### **Extended and expanded right to retain title**

- (1) We reserve the right to retain title to all items that we deliver until full payment of any and all claims that we have against the Customer arising from our business relationship with them, including claims arising from cheques and bills of exchange as well as recourse claims under cheque- and bill of exchange-related law that arise due to any cheque and bill of exchange payments that are accepted in the course of performance. Where payments are made using the cheque/bill of exchange procedure we retain title to the delivered items until the expiry of the risk of recourse arising from bills of exchange that have been provided to us.
- (2) The Customer undertakes to clearly and visibly label the contractual item that is subject to our retention of title with the wording "im Eigentum der Firma CTS GmbH" (property of CTS GmbH) at any time and upon our request or if an application for insolvency is made.
- (3) The Customer is obliged to handle all items that we deliver with care; they are, in particular, obliged to insure these items against fire and water damage and theft at their own cost for a sufficient sum corresponding to the original value of the items. Insofar as servicing and inspection work is required, the Customer must carry out this work in good time and at their own cost.

- (4) Any processing or remodelling of the delivery items that the Customer carries out for us will not result in any obligations for us. Should the Customer process the delivery items, this will be carried out for us as the manufacturer as defined by sect. 950 BGB. Should the Customer combine, mix or process the delivery item with other goods, we will retain co-ownership of the resulting goods. The share of co-ownership will be determined on the basis of the relationship between the delivery item's invoice value and the value of the newly manufactured goods. Combining, mixing or processing of the delivery item is permitted in the ordinary course of business insofar as we retain the above-mentioned security rights.
- (5) The Customer is permitted to sell the delivery items and the items resulting from them as per para. (4) above (hereinafter collectively "**Reserved Goods**") in the course of ordinary business insofar as they ensure that the extended retention of title (assignment of claims per para. (6) below) is maintained. Other disposals, in particular pledging, leasing, lending, transfer of ownership, use as collateral or similar measures, are not permitted.
- (6) The Customer herewith assigns all claims against third parties that arise or may still arise from the selling or other use of the Reserved Goods to us; we accept this assignment. Insofar as the Reserved Goods are under our co-ownership, the assignment will only cover the share of the claim in line with the share of co-ownership.
- (7) The Customer is only authorised to dispose of the Reserved Goods; to process, combine, mix and amalgamate the Reserved Goods and to collect assigned claims in the course of orderly business; this authorisation is revocable. This authorisation may only be revoked if the Customer fails to fulfil their obligations in an orderly manner, in particular their payment obligation as per this contract; becomes insolvent, unable to pay or over-indebted; or an application to initiate insolvency proceedings against their assets is made or such an application is rejected because of lack of assets. Should the authorisation to collect our claims be revoked, the Customer must, at our demand, notify the debtor of the assignment; we are likewise entitled to disclose the extended retention of title to the Customer's customer. Should the authorisation to collect claims be revoked, the Customer is obliged to notify us directly in writing regarding their customer's name or company name and address as well as the sum of the claims.
- (8) Should the Customer become unable to pay; cease to make payments; an application to initiate insolvency proceedings against the Customer's assets be made by the Customer or a third party or it be established that the Customer is over-indebted, the Customer's authorisation to dispose of the Reserved Goods; to process, combine, mix and amalgamate them and to collect the assigned claims will expire without explicit revocation being required.
- (9) In the event that para. (7) and (8) occur we will be entitled to withdraw from the contract after a reasonable period of grace expires without success and to take possession of the Reserved Goods. The Customer will be obliged to hand over the goods. The Customer will be obliged to notify us without delay regarding the name or company name of the debtor who owes the assigned claim. In the aforementioned circumstances we are entitled to disclose the extended retention of title to the Customer's customer. The proceeds of any exploitation of the Reserved Goods will – following deduction of the exploitation costs – be offset against the Customer's obligations to us.

- (10) Should the value of the securities provided to us exceed the secured claims by more than 20 %, we are, at the Customer's request, obliged to release a reasonable sum of the excess securities, determined at our discretion.
- (11) The Customer must notify us in writing without delay regarding imminent or executed third-party access to Reserved Goods; the assigned claims or other documents and documentation; and provide the documentation required to intervene. The Customer must bear any and all costs of intervention, also including any legal fees or other costs for a legal defence.

## § 11

### Guarantee

- (1) Subject to para. 12 below we are liable for material defects and defects of title in the delivery item that already existed when risk was transferred as per the following provisions. In addition, statutory regulations also apply insofar as not otherwise specified here.
- (2) Only the direct purchaser is entitled to assert guarantee claims against us; these claims may not be assigned without our consent.
- (3) We will, as a matter of principle, only be deemed to have assured specific properties if we explicitly confirm them in writing. We will only be deemed to have assumed a guarantee if we refer in writing to a property as "guaranteed".
- (4) In addition to this, the precondition for the Customer to assert claims for defects is that they fulfil their statutory inspection and notification obligations (sect. 377 HGB). Should a defect become apparent on delivery, during the inspection or at any later date, it must be reported to us in writing without delay.
- (5) The Customer must report visible defects, quantity shortfalls or incorrect deliveries without delay and at the latest 3 days after performance of the service – also regarding a part of the service that can be used by the Customer. Concealed defects must be reported in writing without delay and at the latest 3 days after they are discovered and within the guarantee period stated in sect. (8); in all cases before combination, mixing, processing or incorporation. Should the Customer fail to carry out orderly inspection and/or notification of the defect, our liability for the unreported defect respectively the defect that was not reported in good time or in an orderly manner will be excluded as per statutory regulations. In the case of goods that are intended for incorporation, mounting or installation, this also applies if, as a result of breach of one of these obligations, the defect did not become apparent until after the corresponding processing; in such cases the Customer will, in particular, not have any claims to reimbursement of corresponding costs ("deinstallation and installation costs"). Sect. 9 (6) remains unaffected by this.
- (6) In addition to this, defects that are apparent on delivery must be reported without delay to the relevant transport company or deliverer and this person must be instructed to record the defect on the transport documents, in particular the bill of lading. In such cases a copy of

the bill of lading must be forwarded to us without delay. Notifications of defect must include a description of the defect that is as detailed as possible. Insofar as quantity shortfalls and damages to packaging as per the above-mentioned inspection obligations were already apparent on delivery, the Customer must complain to the transport company or deliverer about these defects on receipt of the goods and obtain confirmation of this from that person. Failure to make a report by the stated deadline date or in the proper form will, to this extent, therefore thus also result in the exclusion of any and all guarantee claims on the part of the Customer.

- (7) We must be given the opportunity to establish the reported complaints together with the Customer and to be present when samples are taken for material testing.
- (8) Subject to the following provisions of this para. (8), the statute of limitations for claims for defects by the Customer is one year, commencing on the date the limitation period starts. Should we have concealed the defect with the intent to deceive, the statutory periods will apply for any claims for damages. The statutory periods will also apply for the limitation period for any and all claims for damages made by the Customer on the grounds of defects if we are guilty of intent or gross negligence or the claim for damages is due to injury to life, limb or health.
- (9) No new limitation period will commence for components that are replaced or repaired within the scope of a guarantee.
- (10) Insofar as this sect. 11 does not provide otherwise, our guarantee for material defects and defects of title is limited to supplementary performance. Within the scope of our supplementary performance obligation we are entitled to supplementary performance or replacement at our discretion. Should we fail to fulfil this obligation within a reasonable period of time or should, despite repeated attempts, supplementary performance fail, the Customer is entitled to reduce the purchase price or withdraw from the contract. Rescission of the contract is excluded insofar as the defect is only minor. Over and above this, insofar as we make partial deliveries, rescission of the entire contract is only permissible if it can be proven that the Customer no longer has an interest in the partial deliveries that are made. Further claims, in particular to reimbursement of expenses or to damages, only apply within the scope of the provisions of sect. 13 below. Replaced components must be returned to us upon request and at our cost.
- (11) Supplementary performance does not include disassembly, removal or deinstallation of the defective item or the incorporation, mounting or installation of a defect-free item unless we were originally obliged to perform these services; claims by the Customer to reimbursement of corresponding costs ("deinstallation and installation costs") will remain unaffected by this.
- (12) We will reimburse the costs of expenditure required for inspection and supplementary performance, in particular transport, travel, work and materials costs and, where applicable, deinstallation and installation costs, in accordance with statutory regulations and these general terms and conditions if there is an actual defect. If not, we may demand reimbursement from the Customer for the costs incurred for the unjustified request for remedying of the

defect if the Customer knew or could have recognised that there was not actually any defect. The Customer must ensure that the goods are appropriately packed for transport.

- (13) The Customer must send the defective goods to us for supplementary performance or replacement delivery at their risk unless the type of shipment makes it impossible to return the goods. We bear the transport costs incurred to return goods for supplementary performance, however only from the location to which the purchased goods were delivered as intended and at most to a sum equivalent to the amount of the purchase price. Replaced delivery items or parts thereof will become our property respectively remain our property.
- (14) The Customer must give us the time and opportunity required for supplementary performance or replacement delivery. The Customer will only have the right to remedy the defect themselves or have it remedied by a third party and demand reimbursement of the required costs from us in urgent cases of endangerment of operational safety; to prevent disproportionate damage or if we are in default of supplementary performance. They must report the defect to us prior to taking this action. We must be notified of such self-performance without delay and, if possible, in advance. There is no right to self-performance if we would have been entitled to refuse corresponding supplementary performance under statutory regulations.
- (15) Claims by the Customer for reimbursement of expenses as per sect. 445a para. (1) BGB are excluded unless the last contract in the supply chain is a sale of consumer goods (sect. 478, 474 BGB) or a consumer contract concerning the provision of digital products (sect. 445c sentence 2, 327 para. 5, 327u BGB). The Customer is only entitled to assert claims for damages or reimbursement of fruitless expenditure (sect. 284 BGB) as per the following sect. 13, also where the goods are defective.
- (16) The Customer may only withdraw from or terminate a contract on the grounds of a breach of duty that does not constitute a defect if we are responsible for the breach. The Customer's free right of termination (in particular as per sect. 650, 648 BGB) is excluded. For the rest, statutory requirements and legal consequences apply.
- (17) Further processing or incorporation of goods supplied by us will always be deemed to represent waiving of the notification of defect insofar as the defect is apparent.
- (18) In the case of justified notifications of defect, the Customer may only retain payments in a manner that is proportionate in relation to the material defects that have occurred. Should notification of defect be wrongly given, we will be entitled to demand that the Customer reimburses the corresponding expenses that we incur.
- (19) The Customer will have no claim for defect if there is only a slight variation from the agreed or usual property or serviceability, e.g. slight variations in the colour, dimensions and/or quality or performance characteristics of the products.
- (20) Our guarantee obligation only covers the delivery of newly manufactured products. Insofar as not otherwise agreed, used products are sold "as is", with all guarantees excluded.



- (21) Material defects must always be recognised in writing.
- (22) Unless otherwise agreed in writing, our guarantee does not cover the fitness of the delivery item for the use intended by the Customer if this use deviates from standard practice.
- (23) Where components or materials are supplied to the Customer for processing or provided as items to carry out an order, no incoming goods inspection will be carried out to identify defects that are not obvious unless otherwise explicitly agreed.

## § 12

### **Material defects in software**

- (1) The following terms and conditions apply for material defects in software in addition to sect. 11 above. In the event of any contradiction, the terms and conditions of this sect. 12 will take precedence.

The contracting parties are in agreement that it is not possible to develop EDP programmes in such a way that they are without errors for all conditions of use.

Software functionality is based on the description in the user documentation and any agreements that are concluded in addition to this.

- (2) The manufacturer ensures that the software has no defects during the statutory guarantee period. A defect exists if the software does not perform the functions stated in the service description.
- (3) In the event of such defects the manufacturer will, at their discretion, be entitled to supplementary performance or new delivery. Should the manufacturer be unable to remedy or work around defects within a reasonable period of time by means of supplementary performance, the Customer may – taking statutory exceptional cases into consideration – demand a licence fee reduction or withdraw from the licence contract at their discretion, should they be unable to use the software in a contractually compliant manner.
- (4) Where the defect is only minor, the Customer will only be entitled to reduce the licence fee.  
The above paragraphs include specific provisions regarding the guarantee for software and exclude any other guarantee claims.

## § 13

### **Liability**

- (1) We are only liable for damages, for whatever legal reason,



- a) Insofar as our legal representatives, senior executives or vicarious agents are guilty of intent or gross negligence
- b) In the case of culpable injury to life, limb or health
- c) In the case of culpable breach of material contractual obligations
- d) In the case of defects that we conceal with the intent to deceive or guarantee are not present
- e) Insofar as the German Product Liability Act (ProdHaftG) specifies liability for bodily injury and property damage to privately used items.

We are not liable for further claims to damages.

- (2) A material contractual duty is an obligation whose performance is required to make orderly performance of the contract possible and that the contractual parties can ordinarily expect to be complied with.
- (3) In the case of culpable breach of material contractual obligations our liability is, however, limited to foreseeable damages typical for this type of contract. Foreseeable damages typical for this type of contract will be set at the amount of the contractual value of the affected service.

## § 14

### **Import and export, compliance**

- (1) The Customer is obliged to comply with the relevant definitive statutory regulations that apply to them in connection with the contractual relationship. This applies in particular to anti-corruption and money laundering laws as well as regulations under antitrust law, labour law and environmental protection law.
- (2) The parties are aware that the purchase goods may be subject to export and import restrictions. In particular, there may be permit requirements respectively the purchase goods may be subject to restrictions in foreign countries. The Customer will comply with the applicable export and import control regulations of the Federal Republic of Germany, the European Union and the United States of America as well as with all other relevant regulations. Our performance of the contract is subject to the reservation that performance is not prevented by national or international regulations under export and import law as well as any other statutory regulations.
- (3) If the purchase goods are exported, the Customer is obliged to obtain all documents required for export (e.g. export and customs authorisations, etc.) at their own cost. We are not liable for ensuring that export of the goods is legally permitted or that they comply with statutory and technical regulations in the import country. Furthermore, we are not liable for ensuring that the goods correspond to the current state of technology in the import country.
- (4) The Customer is not entitled to export our products to the USA and/or Canada either themselves or via third parties, directly or indirectly or in any other way. The Customer undertakes to impose corresponding obligations on their customers.
- (5) The Customer indemnifies us from all third-party claims asserted against us in the USA and/or Canada as a result of the export of goods to these countries that the Customer is responsible for, also if we declared our consent to the export of goods to these countries.

## § 15

### **General terms and conditions for services**

The following additional terms and conditions apply for our services, including any assembly and start up that is included in our scope of services:

- (1) Services are charged according to time plus the legal rate of value added tax. Prices are based on the relevant current rates charged for services. Costs for materials, spare parts, travel, accommodation and similar are charged separately.
- (2) Servicing includes the maintenance of equipment. Maintenance is the preventive care required to maintain orderly functioning.
- (3) Repair includes the maintenance of equipment. Corrective maintenance is the correction of any faults that may occur. Should, within the scope of servicing or other agreed services, it become apparent that a repair is required, the Customer will be explicitly informed of this and will then decide whether the repair should be carried out. Should the Customer refuse the proposed repair, the agreed service will be carried out insofar as this is possible under the given circumstances. We cannot be made responsible for bodily injuries or property damage that occurs because the repair has not been made.
- (4) In the event of a work assignment, the Customer will ensure that the installation site is made available to our employees in a clean state.
- (5) The Customer will provide our employees with a lockable room to store their equipment. The Customer is responsible for taking out insurance against fire and water damage.
- (6) The Customer guarantees that the on-site work assignment will not be carried out under conditions that are dangerous or hazardous to health and will take all measures required to protect our employees against any safety or health-related risks.
- (7) Furthermore, the Customer guarantees that our employees will be correctly informed regarding safety regulations for the site where the work assignment is carried out. The Customer has informed us about statutory, official and other regulations regarding the execution of work and operations as well as about health and safety regulations.
- (8) The Customer must implement any special measures required to protect people and equipment at the work site. They must inform our duty manager or foreman about any special safety regulations insofar as they are relevant for our employee.
- (9) The Customer will confirm our service employees' working, travel and waiting times as well as the services performed; the materials that are used and any other ancillary costs. The Customer will use the worksheets presented by our service employees for this purpose. Should we transmit the worksheet to the Customer electronically, in particular in the case of services, the Customer must make any objections within seven days of receipt. Failure to object or to object in time will be deemed to be approval of the proof. In the event a service

for which a fixed sum has been agreed is interrupted and we are not responsible for this, the additional costs will be charged as per our rates. Should the Customer refuse to confirm evidence or if our employees are unable to obtain confirmation for other reasons, the service will be charged according to the assembly worksheets completed by our employees.

- (10) Any work that is carried out and not separately listed in the order by quantity and price must be additionally remunerated as per our rates. The same applies to additional costs that we incur if a service is interrupted for reasons for which we are not responsible.
- (11) The fee for services, spare parts and other material usage is payable within 30 days of receipt of the relevant invoice and without any deductions. Payments must be made to us in cash or by bank transfer, free of bank charges. A payment has been made as soon as the sum is at our disposal.
- (12) The Customer is obliged to provide assistance insofar as this is required for the work assignment and in particular to:
  - a) Provide the number of necessary, suitable auxiliary workers (plasterers, carpenters, welders and other skilled workers) required for the work assignment and for the required period of time. We do not accept liability for the Customer's auxiliary workers;
  - b) Provide service technicians and machine operators;
  - c) Carry out all earthworks, construction work, bedding work and scaffolding work including procurement of the necessary construction materials;
  - d) Provide required equipment and heavy machines (e.g. lifting gear, compressors) and required auxiliary products and materials (e.g. scaffolding, wedges, supports, cement, plastering and sealing material, lubricants, fuel and drive ropes and belts);
  - e) Provide energy, heating, ventilation, lighting, operational force and water, including required connections;
  - f) Provide necessary, dry, lockable rooms to store our employees' tools;
  - g) Transport the service parts to the work site, protect the work site and materials against any and all harmful factors, clean the assembly site;
  - h) Provide suitable, theft-proof break and work rooms (with heating, lighting, washing facilities, sanitary fittings) and first aid for our assembly employees;
  - i) Provide materials and carry out all other actions that are necessary for adjustment of the item that is being assembled and to carry out any contractually foreseen testing;
  - j) Provide any necessary permits for our assembly employees to enter the country and any work permits that may be required as well as, where applicable, briefing on important safety regulations for work outside the Federal Republic of Germany.

- k) Provide fork lifts, lifting platforms, scaffolding and fall protection including necessary operators.
  - l) Provide WLAN guest access.
- (13) The Customer's technical assistance must ensure that our employees can begin their work assignment as soon as they arrive and carry it out without any delays until it has been completed and can be accepted by the Customer.
- (14) The stated delivery date is only approximate. The performance deadline or delivery date are only binding if the order confirmation states that this is the case.
- (15) We will not be in default as long as failure to carry out servicing or maintenance work is due to circumstances for which we are not responsible.
- (16) Should the Customer fail to fulfil their obligations, we will, following the setting of a deadline, be entitled but not obliged to carry out the actions for which the Customer is responsible in the Customer's place and at their cost. For the rest, our statutory rights and claims remain unaffected.
- (17) We will remain the owner of the delivery items until all payments have been received. Should the Customer be in default before full payment has been made, we will be entitled to deinstall components that have been installed.
- (18) Defects in services must be reported to us in writing. The Customer will bear the costs for this notification.
- (19) Insofar as our services are subject to a statutory guarantee obligation, sect. 11 will apply correspondingly.
- (20) Our liability for essential third-party products is limited to the assignment of liability claims that we may be entitled to against the supplier of the third-party products.
- (21) We do not accept liability for damages caused by the following (insofar as we are not responsible for them):
- Unsuitable or improper use
  - Failure to carry out servicing or insufficient servicing
  - Incorrect assembly or commissioning by the Customer or third parties
  - Natural wear and tear
  - Incorrect or careless handling
  - Unsuitable operating materials
  - Chemical, electrochemical or electrical influences
  - Defective construction work
  - An unsuitable building site.

- (22) The Customer is responsible for carrying out regular data back-ups. In cases where we are responsible for the loss of data, our liability will, subject to sect. 13 above, therefore be restricted to the costs that would have been incurred for orderly back up of the data, in particular the costs for reproduction of the data from the back-up copies that the Customer should have made, and for the recovery of the data that would have been lost even if orderly back up had been carried out.
- (23) The Customer must give us the time and opportunity required to carry out all corrections that we consider necessary, otherwise we will be released from liability. The Customer is not entitled to call upon our employees to carry out non-contractual work without our prior written permission.
- (24) The Customer guarantees orderly disposal of materials (components, lubricants, etc.) that must be removed when the work assignment has been completed.
- (25) Within the scope of our guarantee obligation we will bear the costs for spare parts including shipment and the installation and deinstallation costs.
- (26) The guarantee period for spare parts and correction is 12 months, but will run at least until the original guarantee period for the equipment supplied expires.
- (27) The Customer is obliged to carry an acceptance inspection of the assembly as soon as we notify them that assembly has been completed. The system will be deemed to have been accepted following successful test commissioning, even if the Customer does not participate in this despite having been requested to do so.

Separate acceptance inspections of parts that are completed in themselves must be carried out on request. Should the entire system or parts thereof be taken into service or should the acceptance inspection be delayed for reasons for which we are not responsible, acceptance will be deemed to have taken place two weeks after notification that the work is complete.

The Customer is only entitled to use the system prior to an acceptance inspection if we give our explicit permission to do so; system components that are already installed will be deemed to have been accepted upon use.

## § 16

### **Confidentiality and data protection/ privacy**

- (1) The Customer is obliged to treat all confidential information that is exchanged within the scope of the business relationship as strictly confidential and not to make it accessible to third parties or to use it for purposes other than performance of this contract without our prior written consent.
- (2) "Confidential information" is all information that is not publicly accessible and is transmitted by us, as the disclosing party, to the Customer, as the receiving party, including personal data, irrespective of whether this information is disclosed verbally, in writing or in any other way, and is labelled as confidential or by its nature must be viewed as confidential.

- (3) The Customer undertakes not to take any measures that are aimed at analysing, copying or otherwise examining the structure, functionality or technical details of confidential information (“reverse engineering“). This includes in particular the encryption, decompiling or disassembling of software, algorithms, business secrets or other protected materials that are disclosed within the scope of the business relationship.
- (4) The above obligation to maintain confidentiality and the prohibition of reverse engineering do not apply for information that:
  - a) Can be proven to have been known to the Customer prior to disclosure at the time when there was no confidentiality obligation;
  - b) Are publicly known or become known without the Customer being responsible for this;
  - c) Were lawfully made accessible to the Customer by a third party without breaching any confidentiality obligation;
  - d) Must be disclosed under the terms of statutory regulations or official orders, whereby the Customer must inform us without delay regarding the impending disclosure and must disclose as little information as possible.
- (5) The obligation to maintain confidentiality and the prohibition of reverse engineering apply for the duration of the business relationship and for a period of 5 years after it ends. Where the confidential information in question is a business secret, the confidentiality obligation applies for an unlimited period.
- (6) The Customer must return all confidential information without delay or demonstrably destroy it after the business relationship ends or at our request, unless statutory archiving obligations prevent this.
- (7) The Customer undertakes to comply with the relevant applicable data protection regulations, in particular the EU General Data Protection Regulation (GDPR) and the German Federal Data Protection Act (BDSG). Personal data that is collected, processed or used within the scope of performing the contract may only be used for the sole purpose of fulfilling the contract. We may name the Customer as a reference customer upon successful conclusion of the services provided.

## § 17

### **Place of fulfilment, place of jurisdiction and applicable law**

- (1) The place of fulfilment for all claims arising from the business relationship is 72379 Hechingen, Germany.

- (2) The sole place of jurisdiction for all claims arising from the business relationship, including those arising from cheques and bills of exchange, is the place of fulfilment insofar as the Customer is a trader, legal entity under public law or a special fund. We are, however, also entitled to take legal action against the Customer at their general place of jurisdiction.
- (3) The laws of the Federal Republic of Germany apply exclusively for all disputes arising from contracts for which these terms and conditions apply and for all disputes arising from the business relationship between us and the Customer. The application of the United Nations Convention on Contracts for the International Sale of Goods (CSIG) and private international law (PIL) is excluded.
- (4) Should individual provisions be or become legally invalid, the validity of the remaining provisions will not be impaired by this.
- (5) Should a provision be fully or partially invalid, the contractual parties will endeavour to achieve the desired economic success of the invalid provision by other legally permissible means and without delay.