

# HATEC - Haag - Technischer Handel GmbH

## General Terms and Conditions of Delivery and Service to Companies (Customers)

### § 1 Scope

(1) These General Terms and Conditions shall apply to our business relations with our customers, in particular to the delivery of products, for orders connected with the products, services (e.g. repair services), information and consultancy.

(2) Where our General Terms and Conditions are implemented in our business with a customer, they shall also apply to all further business relations between the customer and ourselves unless otherwise agreed in writing. The customer's general terms and conditions shall only apply if expressly acknowledged by us in writing. Our silence regarding such differing terms and conditions shall not be deemed in particular to be acknowledgement or consent, and this shall also apply to future contracts.

(3) Our General Terms and Conditions shall apply in place of any general terms and conditions of the customer – such as conditions of purchase – also where these conditions of purchase stipulate that acceptance of an order is deemed to be the unconditional acknowledgement of the general terms and conditions. By accepting our order confirmation, the customer expressly acknowledges that it waives any legal objection derived from the general terms and conditions.

(4) These General Terms and Conditions shall apply solely to companies within the meaning of § 14 BGB [German Civil Code].

### § 2 Information, advice, properties of the products

(1) We shall provide information and consultancy and other services solely on the basis of our experience to date. Values specified in this context shall be deemed average values. Any information about our products and services, especially illustrations, drawings, contents and performance as well as other information in our quotations and brochures must be regarded as approximate average values.

(2) Reference to standards, similar technical regulations and technical information, descriptions and illustrations of a delivery or service item in quotations and brochures and our advertising shall only represent a property when we have expressly declared the condition to be a "property"; these are otherwise non-binding general descriptions of performance.

(3) We shall only be deemed to have given a warranty if we have indicated a property or performance as "warranted" in writing.

(4) Basic data disclosed to us by the customer in order to manufacture products or provide other services i.e. values and specifications stated by the customer shall – where possible technically and in relation to the product – be used as the basis for manufacturing the products or providing other services. We are not obliged to check independently whether a manufactured product or product requiring a service from us can be used for the purpose intended by the customer. This shall also apply to third party products requiring a service.

(5) All our products are updated on a regular basis and adapted to state of the art progress. We reserve the right therefore to modify our products at our equitable discretion (§ 315 BGB), also after orders are placed or services ordered. We shall assume no liability for the customer being able to use our products for their intended purpose other than liability prescribed by law unless we have agreed otherwise in writing with the customer.

(6) We shall retain the title and copyright to illustrations, drawings, indications of weight and dimension, performance and other property specifications, estimates of cost and other documents about our products and services. The customer undertakes not to disclose the above documents to third parties unless we give our express written consent.

### § 3 Samples

If agreed, we shall provide the customer with a sample of the ordered goods before all the goods are manufactured. Only after the customer has checked and confirmed the sample shall we then manufacture all the ordered goods.

### § 4 Conclusion of a contract, scope of services, risk

(1) Our quotations are subject to change. They are requests for customers to order products or services. A contract is created - also in day-to-day business - only when we confirm the customer's order for products or services in writing (also by telefax). Our order confirmation shall prevail over the content of the contract. Where delivery is made or a service provided immediately, our confirmation can be replaced by our invoice or a delivery note.

(2) If a customer requests a binding price for a service from us, this shall require a written cost estimate. This estimate shall specify the work and materials necessary to manufacture the goods and indicate the respective price. We shall be bound by this cost estimate for up to 4 weeks after the estimate was given.

(3) Assumption of a procurement risk does not lie solely in our obligation to deliver an object which is only defined by its type.

(4) In the event of call orders or acceptance delays caused by the customer, we shall be authorised to provide the service immediately, in particular to procure necessary material for the complete order and manufacture and offer the entire product immediately resp. carry out the order. After the order is placed, no modification request from the customer can therefore be considered unless this was expressly agreed in writing.

(5) The customer must advise us in writing in due time prior to conclusion of the contract of any special requirements of our services or products.

(6) In the case of product deliveries, we shall be authorised to make excess or short deliveries in terms of unit or weight of up to 5 % compared with the order volume or the volume shown on the order confirmation.

(7) If acceptance of a service, the receipt of a service or product or the shipment is delayed for a reason for which the customer is responsible, the customer fails to provide a

shipping order by the end of the delivery period, or the customer fails to fulfil its contractually agreed obligation to call up orders, we shall be authorised, notwithstanding different or more far-reaching rights, after setting an extension of time of 10 days which has expired, at our option to request immediate payment or to rescind the contract or refuse performance and request damages instead of full performance. The time limit must be given in writing but we shall not be required to refer again to our rights under this clause. In the event of our claiming payment of damages, this shall amount to at least 5 % of the net delivery price. This shall not affect any right to prove a different amount of damages or that damages are not incurred.

(8) If shipment or collection of the products is delayed at the customer's request or, for reasons for which the customer is responsible, we shall be authorised to store the goods at the sole risk of the customer, beginning on the date as of which the products should have been shipped or the customer should have collected them and to invoice a lump sum of 1.5 % of the net invoice amount per month or part thereof for costs incurred thereby unless we require proof of the actual expense incurred. This shall not affect the assertion of any further rights. Both parties reserve the right to prove that different costs were incurred or no costs were incurred for storage. Furthermore, we shall be authorised, after the time limit expires, to dispose of the contractual products otherwise, and to deliver to the customer again after a reasonable time limit.

(9) If an order or call for delivery is delayed by the customer, we shall be authorised to postpone the delivery or performance by the same period of time as the customer is behind schedule plus a reasonable scheduling period of up to two weeks.

## **§ 5**

### **Performance, time of performance, default**

(1) Binding delivery or performance dates and time limits for delivery or performance must be agreed with us expressly and in writing as binding. We shall make every endeavour to meet delivery or performance dates and time limits for delivery or performance that are not binding or approximate (approx., about etc.).

(2) Time limits for delivery or performance begin with the customer's receipt of our order confirmation but not before all details about the performance of the order are clarified and all other requirements to be fulfilled by the customer are met, in particular not before agreed advance payments are made. This shall also apply to delivery or performance dates. If the customer requests modifications after placing the order, a new time limit shall begin when we confirm the modification.

(3) Product deliveries may be made in individual cases following consultation prior to expiry of the delivery period. The date of delivery is the date confirmed in writing. If several individual contracts for identical products are running at the same time, we shall be authorised to determine the order in which the individual contracts are fulfilled. Interest in our performance shall lapse for lack of any other written agreement only if we fail to deliver material parts or deliver with delay.

(4) In the case of product deliveries where there is an obligation to be performed at the debtor's place of business, the delivery date shall be deemed the date on which the products are reported ready for shipment, otherwise the date the products are shipped.

(5) Products shall be delivered or services provided - unless otherwise agreed - at our option in the case of long-term contracts when called and in the case of individual contracts within the agreed time limit for delivery or

performance. We can deliver the product or goods on the 1st working day after conclusion of the contract and at any time within the time limit for delivery or performance during normal business hours.

(6) A delivery or performance time requested by the customer on a specific date or in a calendar week shall be indicated on our order confirmation to the customer. This does not bind us to meet this delivery or performance date. However, we shall endeavour to meet the delivery or performance date. If time delays occur, we shall notify the customer in due time. On principle, we deliver ordered products on the delivery date between 6.00 am and 10.00 pm or in the calendar week at the same times from Monday to Friday. On principle, we provide our services between the same times.

(7) If we default in delivery, the customer must first set us a reasonable extension of time to perform the contract. If this elapses in vain, damage claims for breach of duty - for whatever reason - shall only exist as stipulated in § 11 (exclusion and limitation of liability). If we fail to provide a service on the date or within a period determined in the contract, the customer can only rescind the contract if it has bound its interest in the performance to the timeliness of performance in the contract.

(8) We shall not be in default as long as the customer is in default in fulfilling its obligations towards us; this shall also include obligations under other contracts.

(9) In the event of default for which we are responsible by reason of intentional or grossly negligent conduct, the customer shall have the right to compensation for damage which is proven to be due to the delay limited to § 11 (exclusion and limitation of liability). In the case of gross negligence, damages shall be limited to typical, foreseeable damages.

(10) If the customer also has a right by way of exception due to slight negligence, this shall be limited in amount to 0.5 % for each full week of delay but in total to at most 5 % of the net order value.

(11) If the customer does not accept the products or services despite its legal obligation, we shall be entitled to determine the damage. This shall be effected in the case of product deliveries e.g. by self-help sale to a third party or fixing the price. If a threatened self-help sale is not achieved or not achieved in the proper way or time, a right to damages shall exist. Damages shall then be determined by fixing the price. The deadline for fixing the price shall in any case be the first working day after expiry of the extension of time.

(12) We can at any time supply an equivalent third party product for our products unless delivery of our own products is expressly agreed in writing. We can also fulfil the services due from us at any time with the help of sub-contractors.

(13) We shall not be obliged to deliver for as long as the means of transport to be provided by the customer - if agreed - is not available. However, we shall be authorised, where the shipping order or call order can be carried out, to arrange delivery with our own transport or hire transport. In this case too, the products shall be transported at the customer's risk.

## **§ 6**

### **Reservation of own delivery, force majeure and other obstructions**

(1) If we do not receive a delivery or services from our sub-suppliers or sub-contractors for reasons for which we are not responsible, or do not receive a delivery or services correctly or on time despite our taking due care, or events

of force majeure occur, we shall notify our customer in writing in due time. In such case, we shall be authorised to postpone the delivery or service for the duration of the obstruction, or to withdraw in whole or in part from that part of the contract not yet fulfilled if we have met our foregoing duty to provide information and have not assumed a procurement or production risk. Events of force majeure are strikes, lock-outs, official intervention, power shortages and shortages of raw materials, transport bottlenecks through no fault of our own, company obstructions not due to us e.g. fire, water and damage to machinery and any other obstructions that considered objectively were not caused by our negligence.

(2) If a delivery or performance date or time limit for delivery or performance is agreed with binding force and the agreed delivery or performance date or the agreed time limit for delivery or performance is exceeded by more than four weeks due to the above events in § 6 (1), the customer shall be authorised to withdraw from that part of the contract not yet fulfilled. The customer shall have no further rights, in particular no rights to claim damages in this case.

### § 7

#### Shipment and passing of risk

(1) Unless otherwise agreed in writing, we shall ship products ex works uninsured at the customer's risk and expense. We reserve the right to choose the route and means of transport. We shall, however, endeavour to take the customer's wishes into account with respect to the route and type of shipment. Any additional expenses as a result - also where delivery freight paid is agreed - shall be borne by the customer. If shipment is delayed at the customer's request or through the customer's fault, we shall store the products at the customer's expense and risk. In this case, notice that the goods are ready for shipment shall be deemed equivalent to shipment. Partial deliveries and partial services are admissible and can be invoiced separately

(2) The risk of accidental loss or accidental deterioration shall, in the case of an obligation to be performed at the creditor's place of business or an obligation to be performed at the debtor's place of business, pass to the customer when the products and goods to be delivered are handed over to the customer, forwarder, freight carrier or other firms entrusted with shipping the products and goods but at the latest when the goods leave our works, warehouse or branch.

(3) If the delivery is delayed because we assert our right of retention due to the customer's default in payment in whole or in part or due to another reason for which the customer is responsible, the risk shall pass to the customer at the latest as of the date the goods are notified as ready for shipment.

(4) Where products are collected by the customer or by a third party appointed by the customer, collection dates/times must be agreed with us at the latest 3 days before the delivery date.

### § 8

#### Notice of defects, breach of duty, warranty

(1) The customer must give us notice of recognisable breach of duty for poor performance (e.g. defects) immediately but at the latest 12 days after performance - also with respect to a part of the service which the customer can use - of hidden defects immediately but at the latest within the warranty period in § 8 (5).

A notice of defects that fails to comply with the time limit shall exclude any claim by the customer for defects.

(2) Notice of defects must be given in writing. A notice of defects which is not in due time shall exclude any claim by the customer for defects.

(3) In the case of products shipped, notice of defects recognisable upon delivery must also be given to the transport operator and recording of the defects arranged by the transport operator. Notices of defects must include as detailed a description of the defect as possible. If defects in number and weight were already recognisable upon delivery according to the foregoing duties to inspect, the customer must complain to the transport operator upon receipt of the products and goods and have this complaint certified. Failure to give notice of defects in due time shall also exclude any claim by the customer arising from breach of duty due to defects.

(4) The customer must give notice in writing of any other breach of duty, setting a reasonable time limit for remedy, before the customer asserts any other rights.

(5) When handling, processing, combining or mixing with other goods begins, the products delivered shall be deemed approved by the customer according to the contract. This shall also apply if the goods are reshipped from their original destination. Before any of the above activities begin, the customer shall be responsible for clarifying through appropriate checks in terms of scope and method whether the delivered products are suitable for the intended processing, process and other purpose.

(6) In the case of defects, the customer's payments may only be withheld to an extent which is proportionate to the material defects which have occurred. If the notice of material defects is incorrect, we shall be entitled to request compensation from the customer for the expenses we incurred as a result.

(7) If a defect exists, this shall be eliminated at our option - except in the case of recourse due to delivery acc. to §§ 478, 479 BGB - by rectification or replacement or remanufacturing free of charge, whereby we are entitled to two attempts. We shall eliminate any defects for which the customer itself is responsible, and incorrect complaints, on behalf of and at the expense of the customer, if the customer is a businessman.

We shall only be obliged to rectify and replace or remanufacture a product in the country in which we sold our product to the customer or delivered the goods or provided the service according to the provisions of the contract.

(8) Claims by the customer for expenses required to remedy defects, especially transport, route, work and material costs, shall be excluded if expenses increase because the delivery item is subsequently taken to a place other than the place of delivery. This shall not apply in the case of recourse due to delivery according to §§ 478, 479 BGB, and in the case of fraudulent intent or wilful damage.

(9) If the breach of duty does not relate to our work performance, the contract cannot be rescinded if our breach of duty is immaterial. Except in the case of liability for defects, the contract also cannot be rescinded if we are not responsible for the breach of duty.

(10) We shall provide a warranty for verifiable defects - unless expressly agreed in writing, or there is a case of § 478 BGB (right of regress) or a damage claim for injury to life, limb and health and/or we have acted fraudulently or wilfully - for a period of one year, calculated from the date statutory limitation begins. Regarding the customer's rights relating to defects for work performed, the warranty period shall begin upon acceptance of the work/service.

The foregoing limitation period shall also apply to competing claims in tort and to any claims from consequential damage caused by a defect.

(11) Further claims by the customer for or in connection with defects or consequential damage caused by a defect, for whatever reason, shall exist only subject to the provisions of paragraph § 11 (exclusion and limitation of liability) unless these are damage claims resulting from a warranty which is intended to cover the customer against the risk of consequential damage caused by a defect. In this case too, however, we shall be liable only for typical and foreseeable damage.

(12) Our warranty and liability resulting therefrom shall be excluded if defects and damages connected therewith cannot be proven to be due to our faulty products or faulty service. Warranty and liability shall be excluded in particular for the consequences of incorrect or natural use of the products, and the consequences of physical, chemical or electrolytic influences on the products that do not correspond with expected average standard influences. Furthermore, for unsuitable or improper use; faulty installation or start-up by the customer or a third party appointed by the customer; natural wear and tear; incorrect or careless handling; incorrect maintenance.

This shall not affect our liability under § 11 (exclusion and limitation of liability). There is no connection between the reversal of the burden of proof and the foregoing stipulations.

(13) If the customer or a third party rectifies a product incorrectly, we shall not be liable for the consequences incurred. This shall also apply to any modifications of the product or changes in use without our prior consent.

(14) Any right of recourse the customer may have against us when the goods are resold shall only exist if the customer has not reached any agreements with its buyer which exceed statutory claims based on defects.

(15) Acknowledgement of breach of duty, especially in the form of defects, must be given in writing.

### **§9**

#### **Prices, payment terms, objection of uncertainty, return, right of retention**

(1) All prices are on principle quoted in euros and exclude packaging, freight ex delivery works or warehouse, and value added tax which shall be borne by the customer at the legally valid rate.

(2) Services that are not part of the scope of our quotation shall be charged, unless otherwise agreed, on the basis of our respectively valid general price lists.

(3) We are authorised to increase prices unilaterally and reasonably (§ 315 BGB) where material procurement costs or production costs, taxes, wage and ancillary wage costs as well as energy costs and costs due to environmental charges are increased, if more than two months elapses between conclusion of the contract and delivery. An increase for the above purpose shall be excluded if the cost increase for the factors mentioned is cancelled out by a cost reduction for other factors mentioned with respect to the total cost charged for the delivery.

(4) If, according to the contract, we bear the freight charges by way of exception, the customer shall bear any additional costs arising from increases in freight rates after the contract was concluded.

(5) Our invoices are payable when due within 30 days of the invoice date without cash discount or other deductions. We are however also entitled to request payment against

delivery of the product. If cash discount was agreed, this is calculated from the net amount and shall only be admissible if the customer has met all other liabilities older than 30 days arising from the business relationship with us.

(6) We are entitled, despite the customer's other terms, first to offset payments against the customer's earlier debts. We shall inform the customer on how they are offset. If costs and interest have already been incurred, we shall be authorised to offset payment first against costs, then against interest and finally against the principal payment.

(7) The customer shall default in payment, even without a reminder, within 31 days of delivery where we have an obligation to deliver or within 31 days after we have issued a notice that the goods are ready for delivery in the case of delivery ex works. If a binding payment date was agreed, the customer shall be in default if it fails to meet the payment date.

(8) Once in default, maturity interest of 8% above the respective base rate shall be charged. This interest shall be lowered if the customer proves that charges are lower; we are permitted to prove that damage is higher.

(9) Furthermore, if the customer is in default, we shall be entitled to retain deliveries or services based on all contracts with the customer until the customer meets all obligations in full. The customer can avoid this right of retention by providing a directly enforceable guarantee from a major German bank unlimited in time or from a public-sector financial institution linked to a deposit insurance fund for the amount of all our due claims.

(10) The date payment is received by us or credited to our account shall be deemed the payment date. We reserve the right to assert damage in excess of this. Furthermore, default in the fulfilment of one claim shall cause all our other claims from the business relationship to become due immediately.

(11) If payment terms are not met or circumstances known or recognisable that in our proper commercial judgement give rise to justified doubt about the customer's creditworthiness, also including such facts that existed when the contract was concluded but which were unknown to us or should have been known to us, we shall be authorised, notwithstanding further statutory rights in such cases, to cease further work on current orders or delivery and to request advance payments or the provision of objectively appropriate securities for deliveries still outstanding and, after expiry of a reasonable extension of time to provide such securities in vain, to rescind the contract, irrespective of other statutory rights. The customer shall be obliged to reimburse us for all damages incurred by the non-performance of the contract.

(12) If payments are allowed to be deferred and then paid at a later date than agreed, interest of 8 % above the base rate applied when the deferment agreement was concluded shall be owed for the period of deferment without requiring a notice of default.

(13) The customer shall only have a right of retention or right of set off regarding those counter-claims that are not disputed or have been recognised by declaratory judgment unless the counter-claim relates to a breach of material contractual obligations by us. "Material contractual obligations" are obligations that protect the legal positions of the customer which are material to the contract and which have to be granted to the customer under the contract in terms of subject matter and purpose; material contractual obligations are also obligations whose fulfilment makes the due performance of the contract possible in the first place, where the customer regularly

relies on and may rely on compliance with such obligations.

(14) Our price lists and other general prices are without obligation.

(15) An application to institute insolvency proceedings by the customer or the customer's suspension of payments due to rights of retention or other rights shall entitle us to rescind the contract at any time or make delivery of the goods dependent on the prior fulfilment of the payment obligation. If the goods were already delivered, the purchase price shall be due immediately in such cases. We shall also be entitled to reclaim the goods in the above-mentioned cases and to retain them until the purchase price is paid in full.

(16) If the customer ceases to make payments, or files an insolvency petition, the customer shall no longer be authorised to sell, process, combine or mix goods subject to retention of title (see § 10.1). In such case, the customer must immediately store and label the goods subject to retention of title separately, and amounts, to which we are entitled from assigned claims for goods delivered and which the customer receives, must be held in trust for us.

### **§ 10 Retention of title**

(1) We retain title to all equipment and goods we deliver (hereinafter referred to as a whole as "goods subject to retention of title") until all claims under the business relationship with the customer, including claims arising in the future from contracts concluded at a later date, are paid. This shall also apply to any balance in our favour when any or all claims by us are incorporated in a current invoice (current account) and the balance has been established.

(2) The customer must insure the goods subject to retention of title adequately, in particular against fire and theft. Claims against the insurance arising from a case of damage relating to the goods subject to retention of title are herewith assigned to us in the value of the goods subject to retention of title.

(3) The customer is authorised to resell the delivered goods in the normal course of business. The customer is not permitted to make other disposals, especially pledging or granting of equitable lien. If the goods subject to retention of title are not paid for immediately by third party buyers when resold, the customer shall be obliged to resell under retention of title only. Authorisation to resell the goods subject to retention of title shall not apply a priori if the customer suspends payment or defaults in payment to us. This shall also apply if the customer is bound by a group of companies and/or if one of the circumstances stated in the above sentence occurs at the parent or ultimate holding company.

(4) The customer herewith assigns to us all claims including securities and ancillary rights that accrue to it against the end user or third parties with or in connection with the resale of goods subject to retention of title. The customer may not reach an agreement with its buyers that excludes or impairs our rights in any way or nullifies the claim's assignment in advance. When the goods subject to retention of title are sold with other items, the claim against third party buyers amounting to the purchase price agreed between us and the customer shall be deemed assigned unless the amounts applicable to the individual goods can be determined from the invoice.

(5) The customer shall be entitled to collect a claim assigned to us until revoked by us, this revocation being admissible at any time. At our request, the customer is

obliged to forward information and documents required to collect assigned claims, and unless we do so ourselves, notify its buyers immediately of the assignment.

(6) If the customer incorporates claims from the resale of goods subject to retention of title in a current account relationship with its buyers, the customer shall herewith assign to us any recognised closing balance in its favour in the amount which corresponds to the total amount of the claim from the resale of our goods subject to retention of title, such claim being transferred to the current account relationship.

(7) The customer must notify us immediately if the customer has already assigned claims from the resale of goods delivered or to be delivered by us to third parties, especially due to real or unreal factoring, or made other agreements which can impair our current or future security interests according to § 10. In the case of unreal factoring, we shall be authorised to rescind the contract and request the goods already delivered to be handed over; this shall also apply to real factoring if, according to the contract with the factor, the customer is not free to dispose of the purchase price of the claim.

(8) In the event of conduct in breach of the contract, especially in the case of default in payment, we shall be authorised - without first having to rescind the contract - to take back all goods subject to retention of title. The customer shall be obliged in this case to hand over the goods subject to retention of title immediately unless it is responsible for a minor breach of duty only. We may at any time during normal business hours enter the customer's business premises to determine the stock of the goods we delivered. Taking back the goods subject to retention of title shall only involve rescinding the contract if we expressly state this in writing or this is expressly prescribed by obligatory statutory provisions. The customer must notify us immediately in writing of any third-party access to goods subject to retention of title or any claim assigned to us.

(9) If the value of securities existing for us according to the foregoing provisions exceeds the secured claims as a whole by more than 10%, we shall be obliged at the customer's request to release securities at our option.

(10) We handle and process the goods subject to retention of title as manufacturers within the meaning of § 950 BGB without any obligation. If the goods subject to retention of title are processed or connected inseparably with other items that do not belong to us, we shall acquire co-ownership in the new article in the ratio of the invoice value for our goods to the invoice values for the other processed or connected items. If our goods are connected with other movable items into a uniform article that is deemed the principal article, the customer shall herewith already assign co-ownership thereof to us in the same ratio. The customer shall maintain ownership or co-ownership free of charge on our behalf. Rights of co-ownership accordingly arising shall be deemed goods subject to retention of title. The customer shall be obliged at any time at our request to provide us with the information required to assert our ownership or co-ownership rights.

### **§ 11 Exclusion and limitation of liability**

(1) We shall not be liable - save as provided in the terms set forth below - for claims by the customer for damages, for whatever legal reason, in particular for breach of duty from obligation and tort.

This exclusion of liability shall not apply in the case of statutory obligatory liability, in particular:

- to our own intentional or grossly negligent breach of duty and intentional or grossly negligent breach of duty by legal representatives or vicarious agents;
- to material breach of contractual obligations and in the event of justified impossibility and material breach of duty;
- if, in the event of breach of other obligations within the meaning of § 241 (2) BGB, it is no longer reasonable for the customer to expect us to perform;
- in the event of injury to life, limb and health also by legal representatives or vicarious agents;
- where we have assumed a warranty for the workmanship of our products or the existence of successful performance, or a procurement risk;
- in the case of liability under the Produkthaftungsgesetz [German Product Liability Act].

“Material contractual obligations” are obligations that protect the legal positions of the customer which are material to the contract and which have to be granted to the customer under the contract in terms of subject matter and purpose; material contractual obligations are also obligations whose fulfilment makes the due performance of the contract possible in the first place, where the customer regularly relies on and may rely on compliance with such obligations.

(2) In cases other than under § 11 (1), we shall be liable for all damage claims asserted against us or refunds under this contractual relationship for culpable breach of duty, for whatever legal reason, but not in the case of minor negligence.

(3) In the event of liability under § 11 (2) above and liability without negligence, especially given initial impossibility and defects of title, we shall be liable only for typical and foreseeable damage.

(4) Liability from the assumption of a procurement risk shall only apply to us if we have expressly assumed the procurement risk by virtue of a written agreement.

(5) Liability for indirect damages and consequential damage caused by a defect shall be excluded unless we have infringed a material contractual obligation or we, our managers or vicarious agents are reproached for intentional or grossly negligent breach of duty.

(6) Our liability, save for malice, intent and injury to life, limb or health and any other differing indemnity limits prescribed by law, is limited in amount altogether to the scope of cover of the benefits provided by our employers' liability insurance. At the customer's request, we shall provide the customer at any time with a copy of our relevant insurance policy free of charge.

We undertake, in the event of the insurer being released from the obligation to perform (e.g. by our breach of warranty, yearly limit etc.) to be answerable to the customer with our own performance except, however, in the case of malice, a negligent act and injury to life, limb or health, and other differing indemnity limits prescribed by

law only up to a maximum amount of € 750,000.00 (in words: seven hundred and fifty thousand euros) for each claim.

Any further liability shall be excluded.

(7) Exclusion resp. limitation of liability according to the foregoing § 11 (1) to (6) shall apply to the same extent for the benefit of executive and non-executive employees and other vicarious agents as well as our sub-contractors.

(8) Claims by the customer for damage from this contractual relationship may only be asserted within a preclusion period of one year as of commencement of the statutory limitation period. This shall not apply if we are culpable of malice or gross negligence.

(9) There is no connection between the reversal of the burden of proof and the foregoing stipulations.

## § 12

### Export control, intra-Community trade

(1) In the absence of any other written agreement, the delivered product is intended to remain and to be used in the first country of delivery agreed with the customer.

(2) The export of certain goods may be subject to authorisation e.g. because of their nature or intended purpose or final destination. The customer itself is obliged to comply strictly with the relevant export regulations and embargos for these goods (products, goods, software, technology) especially of the European Union (EU), Germany resp. other EU member states and, if applicable, the USA.

(3) The customer shall in particular check and ensure that

- the products delivered are not intended for use in armaments, nuclear facilities or weapon technology;
- no companies or persons specified on the US Denied Persons List (DPL) are supplied with original US goods, software and technology;
- no companies or persons specified on the US Warning List, US Entity List or US Specially Designated Nationals List are supplied with US certificates of origin without relevant approval;
- no companies or persons are supplied who are specified on the List of Specially Designated Terrorists, Foreign Terrorist Organizations, Specially Designated Global Terrorists or the EU Terror List;
- no military recipients are supplied;
- the early-warning indications of the competent German or national authorities of the respective country of origin of the delivery are complied with.

(4) Our products may only be accessed and used if they are consistent with the above check and comply with the assurance; otherwise we are not obliged to perform.

(5) Where products are passed on, the customer undertakes to oblige other recipients in the same way and to notify them of the need to comply with legal provisions.

(6) The customer shall indemnify us from all damages resulting from negligent breach of the foregoing duties according to § 13 (1)-(5).

(7) The customer confirms the correctness of its VAT ID

no. which the customer shall give us without being asked to do so immediately after the contract is concluded. The customer undertakes to notify us and its competent domestic tax authority of any change of name, address, company name and VAT ID no. immediately. If a delivery is deemed subject to tax due to errors in specifying the name, company name and address or VAT ID no., the customer shall refund the tax to be paid by us as a result.

(8) In the case of double taxation - acquisition tax in the customer's country, VAT in Germany – the customer shall pay the excess VAT paid - i.e. the VAT not owed due to the duty to pay acquisition tax - to us, waiving the defence that it has suffered a loss.

### § 13 Property rights

(1) Unless otherwise agreed, we shall be obliged only to deliver products or provide a service in the Federal Republic of Germany that are exempt from third-party industrial property rights and copyrights. If a third party raises justified claims on account of infringement of property rights by products delivered by us to a customer, we shall be liable to the customer within a time limit of one year as follows:

- a. We shall first at our option try to obtain a right of use at our expense for the deliveries in question or modify the products so that the property right is not infringed, or shall exchange the products. If we cannot do so on reasonable conditions, the customer shall be entitled to its legal rights which shall, however, comply with these General Terms and Conditions.
- b. The customer shall only be entitled to rights if it notifies us in writing immediately about the claims asserted by a third party, does not admit any infringement and all defensive measures and settlement negotiations to avert the claims are reserved for us. If the customer stops using the products for reasons of loss minimisation or other good cause, the customer shall be obliged to advise the third party that cessation of use is not deemed to be an acknowledgement of a property right infringement. If an appeal is filed by third parties against the customer resulting from the use of products we supply for infringement of property rights, the customer undertakes to notify us immediately and gives us the opportunity to participate in any legal dispute. The customer must support us in every way in conducting such a legal dispute. The customer must not take any action which could impair our legal position.

(2) The customer shall have no claims if it is responsible for infringement of a property right. The customer shall also have no claims if infringement of the property right was due to the customer's special instructions, an application which we could not foresee or the fact that the products were modified by the customer or used with products we did not supply.

### § 14 Place of performance, legal venue, applicable law

(1) Place of performance for all contractual obligations is our company's registered office.

(2) All disputes shall also be settled before a competent court at the location of our company's registered office unless another legal venue is mandatory under statutory law. We are however also entitled to bring an action against the customer at its general legal venue.

(3) The Law of the Federal Republic of Germany shall exclusively apply to all legal relations between the customer and ourselves, expressly excluding the UN Sales Convention. The above stipulations shall also apply if the customer is a foreigner or its registered office is located abroad.

### § 15 Final provisions

(1) The customer shall be notified in the case of an on-going business relationship in writing of any amendments to these terms and conditions. They shall be deemed approved by the customer unless the customer objects to them in writing in due time. We must make special reference to this legal consequence in our amendment notification. The customer must send its objection to us within six weeks of receipt of the amendment notification.

(2) All agreements, collateral agreements, undertakings and amendments to the contract shall only be valid when given in writing. This shall also apply if the written form agreement itself is set aside. Verbal collateral agreements or amendments/modifications are not valid.

(3) An application to institute insolvency proceedings by the customer or the customer's suspension of payments due to rights of retention or other rights shall entitle us to rescind the contract at any time or make delivery of products or the provision of a service dependent on the prior fulfilment of the payment obligation. If the products were already delivered, or the service already provided, the purchase price shall be due immediately in such cases. We shall also be entitled to reclaim the products in the above-mentioned cases and to retain them until the purchase price is paid in full. If the customer ceases to make payments, or files an insolvency petition, the customer shall no longer be authorised to sell, process, combine or mix goods subject to retention of title. In such case, the customer must immediately store and label the goods subject to retention of title separately, and amounts, to which we are entitled from assigned claims for goods delivered and which the customer receives, must be held in trust for us.

(4) The customer shall not be authorised to transfer its contractual rights without our written consent.

(5) If any current or future provision hereof is or shall become invalid/void or unenforceable for reasons other than under §§ 305-310 of the Civil Code, this shall not affect the validity of the remaining provisions hereof. This shall also apply if a gap arises after the conclusion of the contract that requires filling. The parties shall replace the invalid/void/unenforceable provision or gap that requires filling by a valid provision which in its legal and economic content corresponds to the invalid/void/unenforceable provision and the overall intent of the contract. § 139 BGB (partial invalidity) is expressly excluded.

#### Note:

**According to the provisions of the Federal Data Protection Act, we draw attention to the fact that our company is managed through EDP equipment, and that we also in this respect store data received as a result of the business relationship with the customer.**

Mülheim/Ruhr, March 2009