

# General Terms and Conditions for the Provision of Goods and Services

of

Berghof GmbH

Berghof Automation GmbH

Berghof Products + Instruments GmbH

Berghof Fluoroplastic Technology GmbH

Berghof Membrane Technology GmbH

Berghof Umweltengineering GmbH

Berghof Process Control & Logistics GmbH

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## A. General Terms and Conditions

### § 1 Scope

1. These General Terms and Conditions for the Provision of Goods and Services shall apply to all our business activities. These General Terms and Conditions for the Provision of Goods and Services shall therefore apply to any provision of goods, to services work performances and in particular to any installation, repair, replacement or maintenance activities as well as to training courses.
2. These General Terms and Conditions for the Provision of Goods and Services shall apply exclusively in our relationship with the Customer. They shall also apply to all future business transactions as well as to all business contacts with the Customer, such as the commencement of contract negotiations or the initiation of a contract, even if these General Terms and Conditions for the Provision of Goods and Services are not again expressly agreed to or referred to. The validity of the Customer's general order or purchase conditions is expressly contradicted.
3. If, in any individual case, obligations are created in relation to any person or commercial entity not a party to the contract, the limitations of liability in these General Conditions for the Provision of Goods and Services shall also apply to such persons or commercial entities, insofar as these General Conditions for the Provision of Goods and Services were also applied to the third party when the contractual obligation was established. This shall be the case in particular, if the third party has gained knowledge or already had knowledge of these General Conditions for the Provision of Goods and Services when the obligation was established.
4. Any previous agreements or previous versions of our General Terms and Conditions shall be superseded by these General Terms and Conditions for the Provision of Goods and Services.
5. The acceptance of the delivery of our services and deliveries by the Customer shall be deemed to be acceptance of the validity of these General Terms and Conditions for the Provision of Goods and Services.

### § 2 Contract Formation

1. Unless otherwise agreed, our offers are subject to confirmation and non-binding.
2. We are bound by an order only if it has been confirmed by us in writing by way of an order confirmation or if we begin with the performance of the order. Any change of the order after receipt of our order confirmation requires our express written consent.

### § 3 Delivery, Scope of Goods and Services, Performance Deadlines, Updates, Reservation of self-supply

1. Delivery and performance periods and dates provided are based on the best possible information, but are generally non-binding. The commencement of a delivery period and compliance with any agreed delivery deadline shall be subject to the Customer's timely and proper performance of its duties of cooperation, the provision of all documents required and the payment of any agreed advance payments. Delivery dates confirmed by us refer to the date of dispatch of the Goods from the place of business of the respective contracting Berghof company or other referred place of delivery.
2. Our written offer or order confirmation shall determine the scope of our duty to provide goods and services. Any collateral agreement or amendment shall require written confirmation by us. If our offer or order confirmation is based on information provided by the Customer (data, figures, illustrations, drawings, weight, measurements, etc.), our offer shall only be binding if such information was correct. If it becomes apparent after contract formation that the order cannot be performed in accordance with the Customer's specifications, we shall be entitled to withdraw from the contract if and insofar as the Customer is not prepared to accept any replacement solution proposed by us and to bear any additional costs actually incurred.
3. We shall be entitled to provide partial performance in relation to all goods and services to a reasonable extent. We shall be

entitled to use subcontractors to fulfil our contractual obligations.

4. Any contracts concluded with the Customer are not intended to provide or transfer goods to consumers. We are not obliged to provide updates within the meaning of § 327f Civil Code (BGB) or to inform about them.
5. As soon as we become aware of any risk of the Customer being unable to pay, we shall be entitled to limit any provision of goods and services to advance payment or the provision of security in each case. Our rights to withdraw from any individual contract already entered into shall remain unaffected if and insofar as the Customer fails to make an advance payment or provide security within a reasonable period.
6. If advance payment is agreed with the Customer, delivery shall only be made after receipt of the purchase price in total.
7. Any information contained within our offers or order confirmations, including but not limited to drawings, weight, dimension and capacity, shall only be deemed to be approximately and shall not be regarded as binding. We reserve all rights to such information.
8. If for the fulfilment of an order we concluded a cover transaction, any agreed delivery and performance deadlines are subject to our correct and timely self-supply from our suppliers/subcontractors with the deliveries and services required for our performance (cover transaction). If, for reasons for which we are not responsible, such correct and timely self-supply does not take place, we shall not be in default. In this case we are entitled to withdraw from the contract. We shall inform the Customer immediately of such impediments to performance and reimburse him without delay for any payment made in this respect.
9. In the event of force majeure or other extraordinary circumstances for which we are not responsible, including but not limited to epidemics or pandemics, industrial disputes, operational disruptions, civil unrest, official measures or other unavoidable events, we shall not be in default. In such case, we shall be entitled to withdraw from the contract if we are already in default. In particular, we shall not be in default in the event of delays in delivery insofar as these are caused by incorrect or untimely delivery by our suppliers for which we are not responsible. In case of any hindrance of a temporary nature, the deadlines for the provision of goods and services shall be extended or shall be postponed by the period of such delay as well as a reasonable run-up period.
10. If we are contractually obliged to perform in advance, we may refuse any such performance incumbent upon us if it becomes apparent after entering the contract that our claim to consideration is endangered by the Customer's inability to pay. This shall be the case in particular if the consideration due to us is endangered by the poor the financial circumstances of the Customer or if other obstacles such as the event of force majeure or other exceptional circumstances for which we are not responsible, including but not limited to industrial disputes, operational disruptions, civil unrest, official measures or other unavoidable events such as export or import prohibitions, conflict-related events, insolvency of suppliers or the absence of any essential employees due to illness, that threaten the performance.

#### **§ 4 Prices, Packaging**

1. Our prices are net prices and refer "ex works" (EXW Incoterms 2020) to the place of business of the respective contracting Berghof company, unless agreed otherwise. In the case of services, the prices refer to the performance of the service at the agreed place of performance. When invoicing, the value added tax shall be added at its respective statutory rate.
2. Shipping and packaging costs will be charged to the Customer.
3. If a performance period of more than four months has been agreed between the time of confirmation of the order and the time of performance, we shall be entitled to pass on to the Customer to a corresponding extent any cost increases that have occurred in the meantime for us. The same applies if a performance period of less than four months was agreed, but the performance can only be provided by us later than four months after confirmation of the order for reasons for which the Customer is responsible.
4. If the contract with the Customer is based on a foreign currency, then, in case of currency fluctuations of more than 2% to our disadvantage between the time of conclusion of the contract and the due date of payment in relation to Euro, a corresponding increase in the price shall be deemed to be agreed.

5. In the case of any work performance or services to be rendered by us, the remuneration - even in the case of a previously

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submitted cost estimate - shall generally be charged on the basis of time, unless a lump-sum remuneration has been agreed. Please refer to our offer or order confirmation for the time recording units and the current hourly rates.

6. Expenses and travel expenses shall be invoiced separately unless otherwise agreed.

## **§ 5 Payment Conditions**

1. Unless otherwise contractually agreed, all payments shall be due for payment to us or to one of our accounts within 30 days after receipt of the delivery or after complete performance of our service, strictly net and free of any deductions. For orders with a total value of more than EUR 10,000, the Customer must - at our request - pay 30 % plus pro rata value-added tax as an advance payment at the time the order is placed.
2. For deliveries to a Customer with registered office outside Germany, the Customer shall be obliged to advance payment of the total purchasing price, unless agreed otherwise. The payment shall be due 10 days after notification of readiness for dispatch.
3. If we provide our deliveries or services in definable partial sections, a corresponding part of the agreed payment shall be deemed due for each partial section.
4. Insofar as the Customer has its place of business located outside of Germany and no advance payment is envisaged under the contract, we shall be entitled without any separate agreement in relation thereto, to make any performance subject to the provision of a letter of credit from a bank or savings bank registered in the European Union for the amount of the gross performance price and issued in accordance with the current applicable Uniform Guidelines and Practices for Documentary Credits (ERA 500)/Uniform Customs and Practice for Documentary Credits (UCP 500) of the International Chamber of Commerce (ICC). If we do not demand the provision of such a letter of credit and if nothing to the contrary has been contractually agreed, our claim shall become due upon receipt of the delivery or upon the provision in full of our services. If we provide the goods or services over separable time periods, we shall in any case be entitled to demand payment for the corresponding part remuneration for each period and, as applicable, to demand the provision of a letter of credit for each such period.
5. Unless expressly agreed otherwise, the Customer shall not be entitled to make deductions.
6. If the Customer is in default of payment, it shall compensate us for any damage caused by default, including interest at a rate of 9 percentage points above the base interest rate. If the Customer is in arrears with the payment of a due amount or partial amount for more than 14 days, if the Customer violates the obligations resulting from a retention of title or if the consideration due to us is endangered due to poor financial circumstances of the Customer, the entire outstanding balance of any and all claims shall become due for payment immediately.
7. Payment by bill of exchange or acceptance shall be permitted only after an express agreement on such and only on account of payment. Any additional costs incurred as a result shall be borne by the Customer.
8. Only those claims which are undisputed or confirmed by way of a final legal judgment may be set off against any amount we may claim under our right to remuneration. The same applies to the exercise of any right of retention. The Customer shall be entitled to exercise any right of retention only insofar as it is based on the same contractual relationship.
9. Any assignment of claims against us by the Customer shall require our prior approval, which we shall only refuse for good cause.
10. Our cost estimates shall be deemed valid for 14 days from the date of issue.

## **§ 6 Retention of Title**

1. We reserve title to all the goods delivered by us until such time as payment is rendered in full in relation to all our current and future claims arising from the agreed contract and other ongoing business transactions (secured claims).
2. Goods subject to a retention of title shall not be pledged to any third party or assigned as security until all secured claims have been paid in full. The Customer must inform us without undue delay in text or written form if and to the extent that any third party accesses goods belonging to us.

3. In the event of the Customer acting in breach of contract, including but not limited to in case of any non-payment of the purchase price due, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or demand the return of the goods on the basis of our retention of title. Any demand for the return of goods shall not in itself constitute a declaration of withdrawal from the contract; we are entitled to demand a return of goods and to continue to reserve our right to withdraw from the contract. If the Customer fails to pay the purchase price due, we may exercise these rights only if we have set a further reasonable deadline by which payment must be made or, if such an additional deadline is not required by law.
4. The Customer shall be entitled to resell and/or process the goods in the ordinary course of business subject to our retention of title. In such case the following provisions shall also apply:
5. Any retention of title shall cover the full value of the goods resulting from the processing, mixing or combining of our goods, whereby we shall be deemed the manufacturer. If in any processing, mixing or connection with other goods, a third party retains its retention of title, we shall then acquire a co-ownership in proportion to the invoice value of the processed, mixed or combined goods. In addition, in relation to such resulting goods the same shall apply as in relation to goods supplied under retention of title.
6. The Customer hereby assigns to us by way of security any claims against third parties arising from the resale of the goods or the item, in whole or to the amount of our possible co-ownership share in accordance with the above provision. We hereby accept this assignment. The obligations of the Customer as set out in A. § 6 no. 2. above shall also apply with regard to the assigned claims.
7. As well as ourselves, the Customer shall remain authorised to collect the claim. We undertake not to collect a claim provided that the Customer meets its payment obligations towards us, is not in default in relation to any payment, no application has been made for the commencement of insolvency proceedings and there is no other defect in terms of the Customer's ability to pay. In the event of any of the above, we may require the Customer to disclose to us any assigned claim and the details of the respective debtor, as well as all other details necessary for the collection and that the Customer provides all related documentation and notifies the debtor (third party) of the respective assignment.
8. If the realisable value of any security exceeds our claim by more than 10%, we shall, at the request of the Customer, release security at our discretion.
9. The Customer must treat the reserved goods with care. At our request, the Customer must adequately insure the reserved goods at replacement value against fire, water damage and theft at its own expense. Insofar as any maintenance or inspection work becomes necessary, the Customer shall carry out such at its own expense and in good time.
10. If the effectiveness of this retention of title depends upon its due registration, e.g. in one or more public registers in the Customer's country, we shall be entitled and authorised by the Customer to bring about this registration at the Customer's expense. The Customer shall be obliged to provide at no charge all the support necessary for such registration.

## **§ 7 Duty of Customer to Provide Support**

1. The Customer shall support us and our employees to a reasonable, customary extent. If we are required to provide project-related work performance or services through our employees being in the Customer's company, the provision of work rooms and workplaces with PCs and telephones, the costs of which are to be borne by the Customer, may also be involved as part of such support required at our request.
2. The Customer must provide us with all materials, information and data we require to provide our performance. Data and data carriers must be technically defect-free. Insofar as special statutory or operational safety regulations apply at the Customer's premises, the Customer must inform us of such before the time of our performance.
3. The Customer shall not be entitled to instruct our employees, unless instructions are necessary in connection with safety requirements or operating regulations in the Customer's business.
4. If applicable, the Customer must upon conclusion of the contract immediately provide us with its valid VAT identification number issued to him by its member state of the European Union. The Customer must also inform us immediately about any changes to its VAT identification number. The Customer shall be obliged to compensate us for any damage due to a missing,

incorrect or incomplete notification of its VAT identification number, including but not limited due to a resulting loss of tax exemption for intra-Community deliveries in accordance with §§ 4 no. 1 lit b), 6a UstG. This shall not apply if the Customer is not responsible for its breach of duty.

## **§ 8 Industrial Property Rights**

If we manufacture according to the Customer's drawings, models or samples, the Customer guarantees that no industrial property rights of any third parties are infringed thereby. Upon placing an order with us, the Customer shall be obliged to ascertain whether the products ordered by him infringe any industrial property rights of third parties. In this respect, the Customer shall indemnify us against any claims of third parties. If the Customer is prohibited from manufacturing or delivering by a third party with reference to an industrial property right infringement, we shall be entitled to stop the work and demand compensation for the costs incurred without any obligation to examine the legal situation.

## **§ 9 Confidentiality**

1. The Customer undertakes, during the term of the contract, to keep secret all information which becomes accessible to him in connection with the contract and which is designated as confidential or which is recognisable as being a business or trade secret due to other circumstances ("Confidential Information"), and further undertakes not to record or pass on any such Confidential Information to any third party or exploit such information in any way, unless this is expressly approved in writing beforehand or required to achieve the purpose of the contract. This confidentiality obligation shall remain in force for a further five years after the complete performance or ending of the related order.
2. The Customer's obligations under Clause 1 shall also apply to business secrets within the meaning of § 2 Clause 1 of the German Business Secrets Act (GeschGehG).
3. The Customer undertakes to protect business secrets within the meaning of § 2 No. 1 GeschGehG the same way as other Confidential Information from being obtained by third parties by means of confidentiality measures that are appropriate under the circumstances. The secrecy measures shall at least correspond to the level of care customary in the trade as well as the level of protection that the Customer applies to its own trade secrets of the same category.
4. The above shall not apply to any information which,
  - was already known to the Customer before the start of the contract negotiations or which are communicated by third parties as non-confidential, provided that these do not violate confidentiality obligations on their part,
  - to the Customer has developed independently,
  - is or becomes publicly known through no fault or action of the Customer, or
  - which must be disclosed due to legal obligations or official or court orders.

In the last situation the Customer shall notify us without undue delay before any disclosure. If the Customer claims one of the above exceptions to be applicable, the Customer shall bear the burden of proof in this respect. Further obligations in relation to confidentiality existing at law shall remain unaffected hereby.

5. The Customer shall not be entitled to obtain trade secrets or other Confidential Information by observing, examining, dismantling or testing an item or object within the meaning of Section 3 (1) GeschGehG ("Reverse Engineering"), unless the item or object has been made publicly available.
6. For each case of a negligent breach of the confidentiality obligation by the Customer, we shall be entitled to claim lump-sum damage in the amount of EUR 10,000 (in words: ten thousand euros); the Customer shall be entitled to prove that we have suffered no or less damage. If the proof is successful, the Customer shall only be entitled to compensation for the damage actually incurred.
7. We reserve the right to prove a higher damage, and, if successful, claim such higher damage instead of the lump-sum compensation.

**§ 10 Miscellaneous: Place of Performance, Place of Jurisdiction, Applicable Law, Data Processing, Contract language, Severability, Interpretation of legal terms and phrases**

1. The place of performance shall be the respective registered office of the contracting Berghof company.
2. The exclusive place of jurisdiction for all disputes arising between the parties from the contractual relationship shall be the district court of Tübingen, insofar as the Customer is a merchant, a legal entity under public law or a special fund under public law or the Customer does not have a general place of jurisdiction in the Federal Republic of Germany or relocates its place of jurisdiction abroad. Notwithstanding the above, we shall be entitled to commence legal proceedings in relation to the assertion of any claim against the Customer at its general place of jurisdiction.
3. The Customer is aware that data from business transactions, including personal data, will be stored and processed within the scope of commercial necessity and transferred to third parties. The Customer agrees to such data collection and processing.
4. The language of the contract shall be German. If the parties use another language in addition, the German wording shall prevail.
5. If any provision of these General Terms and Conditions of Delivery and Payment or any provision within the framework of other agreements is or becomes invalid, this shall not affect the effectiveness of any other provisions or agreements.
6. German law shall apply to the contractual and other legal relationships with our Customer to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).
7. Based on the applicable German law the following specific legal terms and phrases within these General Terms and Conditions for the Provision of Goods and Services shall be interpreted as follows:
  - assurance (Zusicherung)
  - cardinal obligations (Kardinalpflichten)
  - completion (Fertigstellung)
  - cover transaction (Deckungsgeschäft)
  - damages (Schadensersatz)
  - demand for the return of goods (Herausgabeverlangen)
  - executives (leitende Angestellte)
  - for good cause (aus wichtigem Grund)
  - fraudulent concealment (arglistiges Verschweigen)
  - goods; singular: item (Produkt(e), Ware(n))
  - handover (Übergabe)
  - intentional or grossly negligent breach of duty (vorsätzliche oder grob fahrlässige Pflichtverletzung)
  - nature of the work (Beschaffenheit des Werkes)
  - non-fungible goods (unvertretbare Sachen)
  - recourse (Rückgriff)
  - rectification (Nachbesserung)
  - reduction in price (Preisminderung)
  - replacement delivery (Nachlieferung)
  - slight negligence (einfache Fahrlässigkeit)
  - subsequent performance (Nacherfüllung)
  - subsequent performance or ancillary duties
  - quality agreement (Beschaffenheitsvereinbarung)
  - text (Textform)
  - vicarious agents (Erfüllungsgehilfen)
  - withdraw (zurücktreten)
  - withdraw from the contract (Rücktritt)



- without undue delay
- work (Werk)
- work performance (Werkleistungen)
- work performance contract (Werklieferungsvertrag)
- written form (Schriftform)

## **B. Special Conditions for the Delivery of Goods**

### **§ 1 Scope**

The following Special Conditions for the Delivery of Goods apply in addition to the General Terms and Conditions under Section A to all contracts with the Customer for the supply of goods.

### **§ 2 Scope of Performance**

1. Transport insurance for goods to be shipped shall only be taken out upon express request. Such transport insurance shall then be concluded in the name and on account of the Customer.
2. We shall be obliged to provide for the transfer of ownership and making available of the respective object to be purchased. Any duty to install or any obligation of installation or configuration of the object purchased shall not be owed, unless such is expressly agreed upon.

### **§ 3 Transfer of Risk**

The risk of loss or deterioration of the goods shall pass to the Customer upon the making available of the goods for delivery, even if partial deliveries are to be made. If delivery is delayed for reasons attributable to the Customer, risk shall then pass to the Customer upon notification of readiness for delivery.

### **§ 4 Exemption from Liability for Non-fungible Goods**

If we manufacture non-fungible goods on behalf of the Customer, in particular custom-made items or prototypes, these items may only be used for internal research purposes and shall not, without our express consent, be used commercially. If the Customer uses such items commercially without our express consent and a violation of domestic or foreign or official safety regulations or product liability requirements results thereby, the Customer shall indemnify us against any subsequent claims by third parties. However, in cases of fault-based liability, this shall apply only if the Customer is at fault. Insofar as the cause of the damage is within the reasonable control of the Customer, it shall bear the burden of proof in this regard.

### **§ 5 Warranty and General Liability**

1. The limitation period for claims based on any defect in our goods (sing. item) or work performance shall be one year from the date of statutory commencement of the limitation period. After the expiry of this year, we may refuse to undertake any subsequent performance without the Customer being entitled to claim a reduction in price, withdraw from the contract or claim damages as a result. This reduction of the statutory limitation period shall not apply to claims for damages other than those based on refused subsequent performance and shall generally not apply to claims based on a fraudulent concealment of any defect.
2. For the purpose of determining whether an item is free of defects at the time of transfer of risk, an concluded quality agreement shall prevail over the objective requirements of the item within the meaning of Section 434 (3) of the German Civil Code (BGB).
3. An accepted intended use of the goods within the meaning of § 434 (2) no. 2 Civil Code (BGB), shall be subject to our comprehensive information by the Customer in writing in regard to such intended use prior to conclusion of the contract, as well as our declared consent.

4. Goods delivered by us shall be deemed to meet the objective requirements of the usual quality with regard to the durability of the item within the meaning of § 434 (3) s. 1 no. 2, s. 2 Civil Code (BGB), if at the time of the transfer of risk the item contains the capacity to maintain its required functions and performance under normal use.
5. Any claim of the Customer for subsequent performance due to defects of the goods or services provided by us shall be subject to the following provisions:
  - 5.1. The Customer shall provide us shall provide us with the goods claimed to be defective for testing purposes, and, if applicable, with reasonable opportunity and time for any subsequent performance.
  - 5.2. We may undertake any such subsequent performance dependent on the Customer having paid the purchase price due for payment. The Customer may, however, withhold payment of a reasonable part of the purchase price in proportion to the defect.
  - 5.3. If a delivered item is defective, we may initially choose whether we provide subsequent performance by remedying the defect (rectification) or by supplying a defect-free item (replacement delivery). The right to refuse the chosen type of subsequent performance under the conditions set down by statutory law shall not be affected hereby.
  - 5.4. In case of any replacement delivery, the Customer shall return the defective goods to us in accordance with the provisions of law upon our request. Notwithstanding the above, we shall however not be obliged to take back the replaced goods from the Customer.
  - 5.5. We shall bear the expenses necessary for the purpose of inspection and subsequent performance, in particular any transport, travel, labour and material costs, provided that the alleged defect actually exists.
    - 5.5.1. If the Customer has, after the defect became apparent, installed the defective goods in another item or attached it to another item in accordance with its type and intended use, we shall not be obliged to reimburse the Customer for necessary expenses for the removal of the defective goods and the installation or attachment of the repaired or delivered defect-goods item.
    - 5.5.2. If the Customer has, upon the defect became apparent, installed the defective goods in another item or attached it to another item in accordance with its type and intended use, we shall, within the framework of subsequent performance, reimburse the Customer for necessary expenses for the removal of the defective item and the installation or attachment of the repaired or delivered defect-free goods, provided however that the Customer has previously given us the opportunity to carry out these actions ourselves within a reasonable period of time.
    - 5.5.3. The Customer shall bear any costs of subsequent performance arising from the fact that the purchased goods has been taken to a place other than the Customer's place of business after delivery.
  - 5.5.4. In the event that any claim for rectification of a defect by the Customer proves to be unjustified, we shall be entitled to claim reimbursement from the Customer of any resulting costs.
6. The Customer may claim damages only as follows:
  - 6.1. For damages based on
    - an intentional or grossly negligent breach of duty on our part, or
    - an intentional or grossly negligent breach of duty by one of our legal representatives, executives or vicarious agents which are not essential contractual obligations (cardinal obligations) and are not main or ancillary obligations in connection with defects of our goods or services.
  - 6.2. For damages which are based on the intentional or negligent breach of essential contractual obligations (cardinal obligations) on our part, on the part of one of our legal representatives, executives or vicarious agents. Essential contractual obligations (cardinal obligations) within the meaning of the above subsections 3.1 and 3.2 are obligations the fulfilment of which is essential for the proper execution of the contract and on the observance of which the Customer regularly relies.
  - 6.3. Furthermore, we shall be liable for damages due to negligent or intentional breach of duties in connection with defects in our goods or services (subsequent performance or ancillary duties), and
  - 6.4. for damages which fall within the scope of protection of a guarantee (assurance-) expressly given by us or a guarantee of quality or durability.
7. In the event of a breach of an essential contractual obligation involving slight negligence, liability shall be limited in amount to the damage typically to be expected and foreseeable for us at the time of conclusion of the contract if due care is taken.

8. Any claim for damages on the part of the Customer in case of a breach of an essential contractual obligation involving slight negligence shall expire one year from the limitation period starting to run under the statute of limitations. Excluded from this shall be any damage or injury in relation to life, personal injury or injury to health.
9. Any rights of a Customer under § 445a, § 445b and § 478 of the Civil Code (*BGB*) where the Customer or its subsequent Customers are in a supply chain shall remain unaffected in accordance with the following provisions:
  - 9.1. The Customer shall have the burden of proof to establish that the expenses for subsequent performance were necessary and that it could not have refused subsequent performance to its buyer in accordance with § 439 para. 4 Civil Code (*BGB*) or could not have performed subsequent performance in a more cost effective manner.
  - 9.2. Any claim under § 445a para. 1 Civil Code (*BGB*) shall expire under § 445b para. 1 Civil Code (*BGB*) within one year from our delivery to the Customer.
  - 9.3. The limitation period for the Customer's claims against us based on a defect in a newly-manufactured item, as defined in §§ 437 and 445a para. 1 Civil Code (*BGB*), shall commence at the earliest two months after the date on which the Customer has satisfied the claims of its buyer, provided that the claims had not yet expired in the relationship between the Customer and its buyer. This suspension of expiry shall end at the latest five years after the date on which we have delivered the goods to the Customer.
  - 9.4. The above provisions under Sections 9.1 to 9.3 do not apply in case the last contract in the supply chain was a sales contract with a consumer.
10. Any claims according to § 327u Civil Code (*BGB*) remain unaffected by the above provisions and exist to the legal extent within the statutory periods.
11. Any rights to claim for damages against us arising from mandatory liability at law, for example under the Product Liability Act, as well as in relation to injury to life, body or health shall remain unaffected by the above provisions and shall continue to exist to the statutory extent required within the statutory periods.

## C. Special Conditions of the Delivery of Software

### § 1 Scope of Application

The following Special Conditions for the Delivery of Software apply in addition to the General Terms and Conditions under Section A to all contracts with the Customer including provided software within the scope of our performances under Section B or D.

### § 2 Scope of Delivery and Rights of Use

1. Delivery and Scope of Delivery
 

The delivery of software including any program corrections, shall be effected by providing the object code on a data carrier, online or as a download from a homepage. The scope of delivery shall also include application documentation. Unless agreed different, we may, at our discretion, provide the application documentation either as an operating manual or on a data carrier. We shall not be obliged to transfer the source code of the software.
2. Rights of Use to the Software
  - 2.1. In regard to the Customer's rights of use to the software the respective licence conditions of the software shall apply.
  - 2.2. Unless agreed different, the Customer shall receive a non-exclusive, non-transferable, non-sublicensable, unlimited in terms of territory and time, right of use to software. The right of use entitles the Customer to use the software on a single PC or a single machine (single-user licence).
  - 2.3. Further rights, in particular in respect to duplicate the software beyond the extent required for use in accordance with the contract, shall not be granted. Unless in regard to correct errors or in case of our explicit written consent, the Customer is not entitled to make changes to the software. The right to correct errors by the Customer shall only apply if the correction of errors by us was previously refused or failed. The creation of a backup copy of the software by the Customer as well as the

duplication within the scope of the usual data backup to ensure the intended operation of the software is permissible. Decompilation of the software in accordance with the provisions of § 69e UrhG is permissible.

- 2.4. The Customer shall be granted the same rights of use to the delivered software corrections to which it is entitled to the original software version.

### **§ 3 Warranty and General Liability**

The conditions of warranty and general liability according to Section B § 5 shall apply. The following shall apply in addition to a claim for subsequent performance:

1. We shall be entitled to perform our subsequent performance at our discretion at the Customer's premises or by remote maintenance. We shall be deemed to have successfully fulfilled our obligation of subsequent performance by making updates, provided with an automatic installation routine, available for download and offering the Customer telephone support to solve any installation problems that may arise.
2. If we are not able to remedy the defect or to provide an error-free subsequent delivery, we shall be entitled to provide possible ways of circumventing the error to the Customer (workaround). Such workarounds shall be deemed as a successful supplementary performance, provided however that they do not lead to a significant impairment of the functionality or processes of the software. Workarounds shall be understood as temporary bridges of an error or a malfunction without intervention in the source code.
3. If needed, we will amend the user documentation accordingly to our supplementary performance.

## **D. Special Conditions for Work Performance**

### **§ 1 Scope**

The following Special Conditions for Work Performance shall apply in addition to the General Terms and Conditions under Item A. to all contracts with the Customer for the provision of work performance.

### **§ 2 Subject Matter**

The subject matter of the contract is the provision of work performance.

### **§ 3 Changes during the execution of the work / Change Request Management**

1. We may - at the request of the Customer or at our own request - agree changes to the work with the Customer. The agreement shall be recorded and signed. Insofar as no agreement is made regarding remuneration or other contractual provisions, in particular schedules with regard to the agreed changes, the changes must be carried out within the framework of the contractual provisions agreed up to that point.
2. If we do not reach an agreement with the Customer on the changes requested by us or the Customer, the following shall apply:  
The Customer is entitled to submit change requests to us until acceptance. The change requests must be provided to us in writing. We will examine the change request. We shall accept changes requested by the Customer unless they are unreasonable for us within the scope of our operational capacity. We shall inform the Customer in writing within 14 days of receipt of the request for change whether
  - the change request is accepted and will be implemented in accordance with the previous provisions of the contract; or
  - the change request affects contractual regulations, e.g. price, execution deadlines, etc.: In this case, we shall inform the Customer of the conditions under which the requested change can be implemented. The change shall only be implemented if the Customer accepts the change at the conditions notified by us within 14 days of receipt of the notification; or

- the examination of the change request for feasibility is extensive: In this case, we shall be entitled to make the examination of the change dependent on the Customer remunerating of our examination effort. In such a case, we shall be obliged to inform the Customer in writing of the time required and the costs for the examination. The audit order shall only be deemed to have been placed if the Customer instructs us in writing to carry out the audit; or
- the request for change is rejected; or
- If we do not respond to the request for change within 14 days of receipt, the request for change shall be deemed to have been rejected.

We shall observe the testing methods as well as the applicable statutory regulations when performing our service.

3. If, after the conclusion of the contract, legal or other regulations change, if new regulations are introduced or if new or changed requirements arise for us, for example from subsequently submitted, changed or new manufacturer documentation, factory standards or risk assessments, which affect the contractual performance, and if the Customer has informed us of this in time, we shall take these requirements into account if possible. Remuneration agreed in service contracts or orders for services shall be adjusted at our reasonable discretion (Section 315 BGB). In doing so, we shall in particular take into account the expenses for changed requirements for the testing effort, for the personnel and / or for used or new tools.

#### **§ 4 Acceptance**

The work shall be handed over upon completion. If such a handover is not possible due to the nature of the work, the Customer shall be notified. After completion and handover or - if a handing over of the nature of the work is not possible - after notification of completion, the work shall be accepted by the Customer. The Customer shall accept the completed work within the agreed period, otherwise within a reasonable period, but at the latest within a period of two weeks after handover or - if a handing over is not possible because of the nature of the work - after completion. The period begins with the notification by us to the Customer that the work has been completed. The work shall be deemed accepted upon expiry of the agreed period for acceptance if the Customer neither declares acceptance in written form nor tells us in written form which defects still need to be remedied. We will point out this legal consequence to the Customer when notifying him of the completion of the work.

#### **§ 5 Warranty an General Liability**

1. The limitation period for claims due to defects in our work shall be one year from the statutory commencement of the limitation period. After the expiry of this year, we may refuse to undertake any subsequent performance without the Customer being entitled to claim a reduction in price, withdraw from the contract or claim damages as a result. This reduction of the statutory limitation period shall not apply to claims for damages other than those based on refused subsequent performance and shall generally not apply to claims based on a fraudulent concealment of any defect.
2. Any claim of the Customer for subsequent performance due to defects of work shall be allowed to the extent permitted by law subject to the following provisions:
  - 2.1. The Customer shall provide us with reasonable opportunity and time for any subsequent performance and in particular shall provide us with the work claimed to be defective for testing purposes.
  - 2.2. If the delivered work is defective, we may initially choose whether we provide subsequent performance by remedying the defect (rectification) or by supplying a defect-free item (replacement delivery). The right to refuse the chosen type of subsequent performance under the conditions set down by statutory law shall not be affected hereby.
  - 2.3. We may undertake any such subsequent performance dependent on the Customer having paid the purchase price due for payment. The Customer may, however, withhold payment of a reasonable part of the purchase price in proportion to the defect.
  - 2.4. We shall bear the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs, provided that the alleged defect actually exists.
    - 2.4.1. The Customer shall bear any costs of subsequent performance arising from the fact that the work has been taken to a place other than the Customer's place of business after delivery.

- 2.4.2. In the event that any claim for rectification of a defect by the Customer proves to be unjustified, we shall be entitled to claim reimbursement from the Customer for any resulting costs.
3. The Customer may claim damages only as follows:
  - 3.1. For damages based on
    - an intentional or grossly negligent breach of duty on our part, or
    - an intentional or grossly negligent breach of duty by one of our legal representatives, executives or vicarious agents which are not essential contractual obligations (cardinal obligations) and are not main or ancillary obligations in connection with defects of our goods or services.
  - 3.2. For damages which are based on the intentional or negligent breach of essential contractual obligations (cardinal obligations) on our part, on the part of one of our legal representatives, executive employees or vicarious agents. Essential contractual obligations (cardinal obligations) within the meaning of the above subsections 3.1 and 3.2 are obligations the fulfilment of which is essential for the proper execution of the contract and on the observance of which the Customer regularly relies.
  - 3.3. Furthermore, we shall be liable for damages due to negligent or intentional breach of duties in connection with defects in our goods or services (subsequent performance or ancillary duties), and
  - 3.4. for damages which fall within the scope of protection of a guarantee (assurance) expressly given by us or a guarantee of quality or durability.
4. In the event of a breach of an essential contractual obligation involving slight negligence, liability shall be limited in amount to the damage typically to be expected and foreseeable for us at the time of conclusion of the contract if due care is taken.
5. Any claim for damages on the part of the Customer in case of a breach of an essential contractual obligation involving slight negligence shall expire one year from the limitation period starting to run under the of the statute of limitations. Excluded from this shall be any damage or injury in relation to life, personal injury or injury to health.
6. Any rights to claim for damages against us arising from mandatory liability at law, for example under the Product Liability Act, as well as in relation to injury to life, body or health shall remain unaffected by the above provisions and shall continue to exist to the statutory extent required within the statutory periods.

## **E. Special Conditions for Training**

### **§ 1 Scope**

The following Special Conditions for Training shall apply in addition to the General Terms and Conditions under Item A. to all contracts with the Customer for the provision training.

### **§ 2 Place of Performance**

1. Training courses shall be held at the location specified in our offer.
2. In case a training course is agreed to be carried out at the Customer's premises in accordance, the Customer shall be obliged to provide suitable rooms and presentation equipment for carrying out the training.

### **§ 3 Participants**

1. The maximum of the number of persons to attend the training is specified in our offer.
2. Unless agreed different, our training will only be provided to the Customer and its employees, but not to any third parties or persons.

### **§ 4 Cancellation, Rescheduling of a Training course**

1. Our training course may only be terminated for good cause. The termination must be made in written form.

2. The training will be held by the instructor specified in our order confirmation. Should an instructor be unavailable on the agreed training date for reasons for which we are not responsible, we then shall be entitled to substitute such instructor or to reschedule the training date.

## **§ 5 General Liability**

1. The Customer may claim damages only as follows:
  - 1.1. For damages based on
    - an intentional or grossly negligent breach of duty on our part, or
    - an intentional or grossly negligent breach of duty by one of our legal representatives, executives or vicarious agents which are not essential contractual obligations (cardinal obligations) and are not main or ancillary obligations in connection with defects of our services.
  - 1.2. For damages which are based on the intentional or negligent breach of essential contractual obligations (cardinal obligations) on our part, on the part of one of our legal representatives, executive employees or vicarious agents.  
Essential contractual obligations (cardinal obligations) within the meaning of the above subsections 1.1 and 1.2 are obligations the fulfilment of which is essential for the proper execution of the contract and on the observance of which the Customer regularly relies.
2. In the event of a breach of an essential contractual obligation (cardinal obligations), involving slight negligence, liability shall be limited in amount to the damage typically to be expected and foreseeable for us at the time of conclusion of the contract if due care is taken.
3. Any claim for damages on the part of the Customer in case of a breach of an essential contractual obligation involving slight negligence shall expire one year from the limitation period starting to run under the statute of limitations. Excluded from this shall be any damage or injury in relation to life, personal injury or injury to health.
4. Any rights to claim for damages against us arising from mandatory liability at law, for example under the Product Liability Act, as well as in relation to injury to life, body or health shall remain unaffected by the above provisions and shall continue exist to the statutory extent required within the statutory periods.

## **F. Special Conditions for the use of Hotlines**

### **§ 1 Scope**

The following Special Conditions for the use of Hotlines apply in addition to the General Terms and Conditions under Item A. to all calls made by the Customer to Hotlines provided by us.

### **§ 2 Description of Services**

1. The hotlines can be reached by telephone or by e-mail. Some of our hotlines are subject to a charge. The current version of the Customer handbook indicates when costs are incurred and the costs charged for the use of the respective hotline.
2. The following services are provided via the hotline:
  - Acceptance of maintenance or service orders;
  - Acceptance of orders for spare parts and wearing parts;
  - Acceptance of Customer enquiries about our products. 3.
3. We reserve the right to discontinue the hotline at any time.

### § 3 No troubleshooting via the hotline

The hotline shall only be used to accept spare parts orders and Customer enquiries; maintenance or troubleshooting via the hotline shall not be owed and shall not take place unless separate care, maintenance or hotline contracts have been concluded with the Customer with deviating provisions.

### § 4 General Liability

1. The Customer may claim damages only as follows:
  - 1.1. For damages based on
    - an intentional or grossly negligent breach of duty on our part, or
    - an intentional or grossly negligent breach of duty by one of our legal representatives, executives or vicarious agents which are not essential contractual obligations (cardinal obligations) and are not main or ancillary obligations in connection with defects of our services.
  - 1.2. For damages which are based on the intentional or negligent breach of essential contractual obligations (cardinal obligations) on our part, on the part of one of our legal representatives, executive employees or vicarious agents.

Essential contractual obligations (cardinal obligations) within the meaning of the above subsections 1.1 and 1.2 are obligations the fulfilment of which is essential for the proper execution of the contract and on the observance of which the Customer regularly relies.
2. In the event of a breach of an essential contractual obligation (cardinal obligations), involving slight negligence, liability shall be limited in amount to the damage typically to be expected and foreseeable for us at the time of conclusion of the contract if due care is taken.
3. Any claim for damages on the part of the Customer in case of a breach of an essential contractual obligation involving slight negligence shall expire one year from the limitation period starting to run under the statute of limitations. Excluded from this shall be any damage or injury in relation to life, personal injury or injury to health.
4. Any rights to claim for damages against us arising from mandatory liability at law, for example under the Product Liability Act, as well as in relation to injury to life, body or health shall remain unaffected by the above provisions and shall continue exist to the statutory extent required within the statutory periods.