

# General Terms and Conditions (Sales)

## General Terms and Conditions of Sale and Delivery



### § 1 Scope and general provisions

1. Every offer and every performance (including deliveries, purchases, service provisions and work productions) by either EDAG Engineering GmbH, Kreuzberger Ring 40, 65205 Wiesbaden, Germany, or any of its affiliated companies (jointly referred to as „**Contractor**“) towards a business professional, a legal entity under public law or a special fund under public law („**Principal**“) are made exclusively on basis of these General Terms and Conditions of Sale and Delivery being part of the Contractor's General Terms and Conditions („**GTC**“).

For the purpose of this GTC,

- a. business professional means a natural or legal person or a partnership with legal personality (i.e. that has the capacity to acquire rights and to incur liabilities) who or which, when entering into a legal transaction, acts in exercise of his or its trade, business or profession;
  - b. merchant is a person who carries on a commercial business meaning any commercial enterprise unless, by reason of its nature or size, such enterprise does not require a commercially organized business operation;
  - c. affiliated companies are such companies in which EDAG Engineering GmbH either holds the majority of shares or is entitled to the majority of the voting rights (*majority interest*).
2. Unless otherwise agreed individually, these GTC – in the version valid at the time of conclusion of a respective contract or, in any case, in the version last notified to the Principal in text form – shall also apply as a framework agreement for all future similar contracts between the Contractor and the Principal, without the Contractor having to point to, or refer to, this GTC in each individual case.
  3. Principal's general terms and conditions which are either in conflict with or supplementary to or deviating from this GTC shall only become part of a contract if and to the extent that Contractor has expressly consented to their validity in written form. This requirement of consent shall apply in any case, for example also if the Contractor unconditionally executes his performance, accepts payments without objecting and/or remains silent to a declaration of inclusion issued by the Principal.
  4. Individual agreements entered individually between Contractor and Principal (including side-agreements, supplements and amendments) shall in any case take precedence over these GTC. Subject to proof of the contrary, the content of such individual agreements shall be determined by a written contract, or by written confirmation by Contractor.
  5. Legally relevant declarations and notifications given by Principal – in particular setting deadlines as well as giving notifications of defects, revocations and/or price reductions – must be made in writing i.e. in written or in text form (e.g. letter, email, fax, etc.). Legal formal requirements and other evidence, in particular in the event of doubt as to the legitimacy of the declarant, remain unaffected thereof.
  6. References to the applicability of statutory provisions only serve for clarification. Even without such clarifications, the statutory provisions shall therefore apply to the extent they are not directly amended or expressly excluded in this GTC.
  7. Regarding Contractor's informational obligation under the GDPR please note the privacy statement which is available under the following internet address: <https://www.edag-engineering.de/en/privacy-protection/>

### § 2 Offer and accompanying documents

1. Verbal offers made by the Contractor are always non-binding and subject to confirmation; they only become binding upon confirmation in written or text form. This written or text form requirement shall also apply to any side agreements and/or amending agreements. The conclusion of a contract cannot be brought about by the Principal by means of unilateral reference to contract negotiations that have taken place. A silence on the part of the Contractor shall in no case be deemed consent.
2. The binding period for offers in writing or in text form – as well as for verbal offers confirmed in writing or in text form – shall be thirty (30) days from the issue date as stated in the offer itself, irrespective of the date of receipt unless a differing date regarding the validity of the offer is stated therein
3. The information either contained in the offer letter itself, in any additional document described as annex to the offer letter and being used for the purpose of determination of contractually owed characteristics, functions and/or quality features of Contractor's performance („**Offer Documents**“) must be checked by the Principal for their suitability for the purpose intended by the Principal as well as for customary use. In the event of discrepancies, the Contractor shall be notified within ten (10) days of receipt of the offer documents, otherwise the Principal shall be responsible for any resulting defects and deviations.
4. Information and data contained in documents (e.g. in catalogues, technical documentations, calculations, worksheets, DIN standards, data sheets, etc.) which are provided in connection with the offer documents („**Accompanying Documents**“), whether such information or data are technical descriptions, drawings, illustrations, specifications, programs or performance details, are non-binding and in particular do not constitute an agreement on the quality in accordance with section 12 clause 2 of this GTC.
5. Contractor reserves all rights of ownership, use and exploitation in relation to the Offer Documents and to the Accompanying Documents as well as to the information contained therein. Additionally, each and every piece of information contained therein constitutes a trade and/or business secret of the Contractor. Principal is prohibited from unauthorized exploitation or unauthorized disclosure to third parties.

### § 3 Retention of title

1. The tangible and intangible performance outcome owed by the Contractor („**Performance Items**“) shall remain the Contractor's property until all present and future claims

of the Contractor arising from any ongoing business relationship with the Principal („**Secured Claims**“) are settled.

2. The Performance Items subject to retention of title may neither be pledged to third parties, nor transferred by way of security before full payment of the Secured Claims was made. The Principal shall notify the Contractor immediately in writing if an application for the opening of insolvency/bankruptcy proceedings has been filed or if the Performance Items were seized by third parties (e.g. compulsory enforcement by means of attachment).
3. If the Principal is in breach of the terms of the agreement, in particular default of payment, the Contractor shall be entitled to withdraw from the contract pursuant to the statutory provisions and/or to claim the return of the Performance Items on basis of the retention of title. The claim for return does not, simultaneously, include the declaration of revocation; the Contractor is, however, entitled to demand surrender only of the Performance Items subject to retention of title and to reserve the right to revoke from the contract. Upon claim of surrender, the Performance Items are subject to an unrestricted authority of exploitation by the Contractor. As far as the Performance Items involve software, upon claim of surrender all rights of use and exploitation granted to the Principal within the scope of the contract-matter shall expire. The Contractor may only assert these rights if he has previously unsuccessfully set the Principal a reasonable deadline for payment or if such a deadline is unnecessary under the statutory provisions. The Principal is entitled, unless notified otherwise, to resell and/or process the Performance Items subject to retention of title in accordance with the conditions of the following clauses within the normal course of business.
4. In the event of processing, intermixture or combination of tangible Performance Items subject to retention of title with one or more movable items, the Contractor's retention of title shall extend to the entire emerging item; the Contractor shall be deemed the manufacturer thereof.
5. In the case of processing, intermixture or combination of Performance Items with items of third parties, the ownership rights of these third parties remain in force. The Contractor shall acquire co-ownership in proportion to the values of the processed, intermixed or combined items. In all other respects, the same shall apply to the emerged item as is applying to the Performance Items subject to retention of title.
6. If the Principal sells Performance Items, subject to retention of title, to third parties without receiving full consideration in advance or concurrently, he must agree a retention of title with these third parties pursuant to this conditions. The Principal hereby assigns to the Contractor his claims from such resale as well as the rights from such retention of title agreed by him. The Contractor hereby accepts this assignment. The Principal's obligations under the above clause 2 shall apply mutatis mutandis in respect of these assigned claims. Furthermore, the Principal shall remain authorized to collect these assigned claims alongside the Contractor. In this respect, the Contractor will not collect the assigned claims to the extent the Principal meets his payment obligations towards the Contractor, if there is no deficiency regarding the Principal's performance and as long as the Contractor does not exercise its right to redeem the Performance Items pursuant to clause 3 above. Should this be the case, however, the Principal shall be obliged to notify his purchasers of the assignment and to provide the Contractor with the information and documents required to assert his rights against the purchasers; in such case, the Contractor shall also be entitled to revoke the Principal's authority to further sell the Performance Items subject to retention of title.
7. If the realizable value of the Performance Items subject to retention of title exceeds the Secured Claims by more than 10%, the Contractor shall, upon request of the Principal, be obliged to release securities at the Contractor's discretion within a reasonable period of time.

### § 4 Performance Periods and Delay in Performance

1. The period for rendering the performance of the Contractor („**Performance Period**“) shall either be agreed individually with the Principal or specified by the Contractor in his offer letter or in the acceptance of an order. Unless time is expressly agreed to be of the essence in the sense of a fixed date transaction, compliance with Performance Periods shall not be deemed to be an essential part of the Contractor's performance obligations, so that delayed performance shall also constitute fulfilment of the Contractor's performance obligation.
2. The Contractor's observance of performance deadlines shall be subject to the fulfillment of all obligations incumbent upon the Principal, in particular the timely receipt of all physical and immaterial provisions (including documents, plans, materials, components, software, etc.) to be supplied by the Principal, necessary approvals and releases as well as compliance with the agreed terms of payment by the Principal. If these prerequisites are not fulfilled, not completely fulfilled or not fulfilled in time, the respective Performance Period shall be extended accordingly; the statutory consequences of default shall be waived in this respect.
3. Should the Contractor not meet a Performance Period for reasons for which he is not responsible („**Non-Availability of Performance**“), the Contractor shall inform the Principal without undue delay and notify the expected new Performance Period. If the Non-Availability of Performance also continues within the new Performance Period, the Contractor shall be entitled to withdraw from the contract in whole or in part. Non-Availability of Performance particularly includes the delayed delivery of the Contractor by a supplier provided the Contractor have concluded a congruent hedging transaction, if neither the Contractor nor his supplier be in default or if the Contractor is not obliged to procure the non-available goods/services in the individual case.
4. The occurrence of default on the part of the Contractor („**Delay in Performance**“) shall be determined in accordance with the statutory provisions, whereby a warning notice from the Principal to the Contractor setting a reasonable deadline shall be required in any case. Liquidated damages and/or contractual penalties shall in any case require an express written agreement between the Principal and the Contractor. If liquidated damages were agreed upon, the Contractor shall in any event reserve the right to prove that the Principal has incurred no damages at all or only minor damage than the liquidated damages. Otherwise, the statutory consequences of default shall apply.

# General Terms and Conditions (Sales)

## General Terms and Conditions of Sale and Delivery



5. The rights of the Principal under section 12 of these GTC and the statutory rights of the Contractor, in particular in the event of exclusion of the obligation to perform (for example due to impossibility or unreasonableness of performance and/or subsequent performance) shall remain unaffected by the above provisions.

### § 5 Passing of risk and default in taking performance

- Each performance by the Contractor shall be ex works, where the place of performance for deliveries (including deliveries of Performance Items) and any supplementary performance to bring the original performance into conformity with the contract by Repair or Replacement ("**Subsequent Performance**") shall be. Deliveries are to be made available ready for loading without packaging. Shipment to another destination shall only be effected at the expense of the Principal and on the basis of a corresponding agreement. Subject to a deviating agreement, the Contractor shall be entitled to determine the type of dispatch (in particular transport company, dispatch route and packaging) at his own discretion.
- The risk of accidental perishing or deterioration shall pass to the Principal at the latest upon handover. In the event of collection by the Principal, this risk shall pass to the Principal upon notification of completion and provision of the service in conformance with the contract at the Contractor's premises. In the case of data transmission, the risks shall pass to the Principal upon dispatch of the data. In the case of shipment, the risk and the risk of delay shall pass to the Principal upon delivery to the forwarding agent, the carrier or any other person or institution designated to carry out the shipment.
- Acceptance of the performance as being in conformity with the contract ("**Acceptance**"), if either agreed or required by law, shall be decisive for the transfer of risk. The statutory provisions regarding contracts to produce a work shall apply mutatis mutandis to a contractual agreed Acceptance. Handover or Acceptance are deemed equivalent if the Principal is in default of Acceptance.
- Should the Principal be in default of taking performance/Acceptance or fail to co-operate, or should the performance of the Contractor be delayed for other reasons for which the Principal is responsible, the Contractor shall be entitled to claim compensation for the resulting damage including additional expenses (e.g. storage costs). In such case, the Contractor may charge a liquidated damages amounting to 0.5% of the performance value per commenced calendar week, beginning with the Performance Period, respectively with the notification of the readiness for collection of the performance, but not exceeding a total of 5% of the performance value of the performance covered by the default of taking the performance. The evidence of a higher damage and the statutory claims (in particular compensation for additional expenses, appropriate compensation, termination) by the Contractor shall remain unaffected; the liquidated damages shall, however, be set off against further monetary claims. The Principal shall be entitled to prove that the Contractor has incurred no damage at all or only substantially less damage than the above described liquidated damages.

### § 6 Terms of payment and default of payment

- The prices of the Contractor are net prices and are ex works excluding transport, insurance and packaging, except agreed otherwise. Value added tax shall be invoiced to the Principal in addition; a statutory change in the amount of value added tax shall not entitle the Principal to terminate the contract. Should dispatch be agreed, the Principal shall bear all transport costs and ancillary transport costs ex works, including the costs of packaging and transport insurance. In addition, the Principal shall bear any customs duties, fees, taxes and other public charges.
- Performances which were not included in the Contractor's offer, or in an order of the Principal accepted by the Contractor, but which the Principal has nevertheless requested the Contractor to render in the course of a business relationship ("**Additional Services**") may be invoiced to the Principal separately at regular market conditions. Any differing, extra or supplementary services of the Contractor resulting from change requested by the Principal shall be deemed as Additional Services without specific or additional notifications to the Principal.
- The Contractor shall be entitled to invoice his performances on a monthly basis unless except when agreed otherwise. The respective invoice amount shall be due and payable by the Principal within fourteen days of invoicing, unless otherwise stated on the invoice ("**Payment Period**"). The Contractor shall be entitled – also within the framework of an ongoing business relationship – at any time to perform a service in whole or in part only against advance payment. The Contractor declares a corresponding reservation at the latest within an order confirmation.
- Upon expiry of the Payment Period, the Principal shall be in default of payment without the need for a warning notice. The invoice amount shall bear interest during the time of default at the applicable statutory default interest rate. The following rights remain unaffected: The statutory right of merchants to claim interest from the due date for their claims from mutual commercial transaction; the right to claim further damage; the statutory right to claim a lump sum of 40,00 Euro from the debtor of a claim being in default of payment, if the debtor is not a consumer.
- Invoices of the Contractor shall be deemed accepted if the Principal has not objected to them in text form within two weeks of receipt.
- The Contractor shall be entitled to first set off payments of the Principal against older debts of the Principal and to first set off incoming payments of the Principal against costs, interest and then against the main performance.
- In the event of an apparent danger to the Contractor's price claim after conclusion of the contract due to the Principal's lack of ability to pay (e.g. due to an application to open insolvency proceedings, rejection of an important loan, surrender of unfunded cheques, etc.), the Contractor shall be entitled to refuse performance in accordance with statutory provisions. This right to refuse performance shall lapse if the Principal fulfils the price claim or provides security for it. The Contractor may specify a reasonable period of time within which the Principal shall, at the Contractor's discretion, fulfil the price claim concurrently with provision of the performance, or provide security. The Contractor may withdraw from the contract if the Principal fails to meet such deadline.
- The Principal is only entitled to set-off or retention for legally established or undisputed claims. In the event of defects in the Contractor's performance, the Principal's counter

rights – in particular pursuant to section 12 clause 5 sentence 2 of these GTC – shall remain unaffected.

### § 7 Acceptance for performances to produce a work

- To the extent Acceptance is possible according to type or quality of the performance, the Principal shall immediately accept a work upon production by the Contractor ("**ready-for-Acceptance**"). The performance shall be deemed ready for acceptance if it possesses the essential characteristics of the agreed quality. Regardless, the Principal may accept the work before ready-for-Acceptance.
- When the Contractor's obligation to produce a work can be divided into several partial work performances which can be used independently by the Principal, the Principal's obligation to accept shall apply to each partial work performance.
- The Principal reports the Acceptance in writing to the Contractor without undue delay. Should the Principal fail to comply with this obligation, a work performance ready for acceptance shall be deemed to have been conclusively accepted if (i) its suitability and faultlessness can be ascertained by the Principal through an external inspection and the Principal accepts it without rejecting it within fourteen (14) days, (ii) the Principal finally puts it into use after a fourteen-day trial phase, or (iii) the Principal unconditionally pays the corresponding price to the Contractor.
- The Principal may not refuse Acceptance in the event of non-material defects in the work performance ("**Acceptability**"). Acceptability shall be deemed to exist in particular if the fitness for use of the work performance for the Principal is not, or not significantly, impaired, e.g. in the case of cosmetic defects. Additionally, the absence or incompleteness of documentation, design papers or source code shall not impair the Acceptance of the work.
- The work performance shall also be deemed to have been accepted if the Contractor has set the Principal a fourteen-day (14-day) period for Acceptance after production of the work and the Principal has not refused Acceptance within this period stating at least one defect.
- The transmission of an invoice for the corresponding work performance to the Principal shall also be deemed to be the setting of a deadline for Acceptance by the Contractor to the Principal within the meaning of section 7 clause 5 of this GTC, whereby the payment deadline for the invoice amount shall be deemed to be the deadline for Acceptance.

### § 8 Effects of force majeure

Force majeure of any kind, in particular unforeseeable operational, traffic or shipping disruptions, fire damage, floods, unforeseeable labor, shortages of energy, raw materials or auxiliary materials, strikes, lockouts or official orders, or other obstacles for which the Contractor is not responsible, which delay, prevent and/or make unreasonable the manufacture, shipment or Acceptance, shall release the obligor from the obligation to deliver or accept for the duration and extent of the disruption. If the delivery and/or Acceptance is exceeded by more than eight (8) weeks as a result of the disruption, both parties shall be entitled to withdraw from the contract.

### § 9 Rights to Tools for the provision of the performance

- The trade secrets, practical knowledge, know-how, industrial property rights, (software) copyrights as well as any combination thereof used by the Contractor within the scope of his performance for the Principal ("**Intangible Tools**") shall remain the sole property of the Contractor. The Principal shall not be granted any rights of use or exploitation to these Intangible Tools.
- The aids, appliances, assistive devices, auxiliary models, work equipment, utensils, models, molds, etc. manufactured by the Contractor within the scope of his performance for the Principal ("**Tangible Tools**") shall not form part of the subject matter of performance of the Contractor without express agreement and shall remain the sole property of the Contractor; the Contractor shall also be entitled to all rights of use and exploitation of these Tangible Tools.
- The Tangible Tools shall be kept by the Contractor for a period of six (6) months after Acceptance of the parts by the customer without recognition of a legal obligation. After expiry of this period, the Contractor may scrap the Tangible Tools unless the Contractor and the Principal have agreed on further storage of the Tangible Tools or transfer of ownership against payment of an appropriate remuneration.

### § 10 Rights to Performance Results and inventions

- The rights of the Contractor to the owed intangible or intellectual Performance Items ("**Performance Results**"), shall become the property of the Principal in accordance with the following provisions upon elimination of the reservation of title under section 3 of these GTC, to the extent it is legally possible.
- Upon discontinuation of the retention of title according to section 3 of these GTC, the Principal is granted the right to use copyright-protected Performance Results in all known types of use without restriction in terms of time, place and content ("**Right-to-use**"). This Right-to-use includes the right of reproduction, to right of distribution, the right to exhibition, the right of recitation, performance and presentation, the right of making works available to the public, the right of broadcasting, the right of communication by video or audio recordings as well as the right of communication of broadcasts and of works made available to the public. The Right-to-use is granted in a transferable and sub-licensable form. The Contractor retains a right of use for his own scientific research and development purposes. As far as legally possible both for the Contractor and in general, the Contractor waives the right of naming the author.
- To the extent that Performance Results contain inventions capable of being protected by industrial property rights, and no deviating contractual agreement has been made, the Contractor shall be entitled to the rights to these inventions. The Contractor is not obliged to file an application for industrial property rights. The Principal shall be granted

# General Terms and Conditions (Sales)

## General Terms and Conditions of Sale and Delivery



a simple right to use such Performance Results, which shall be unlimited in terms of space, time and content, transferable and sub-licensable and shall be deemed to be settled with the total remuneration. In return for this grant, the Principal shall be obliged to bear any costs incurred by the Contractor (in particular for employee invention remuneration). At the Principal's request, which must be asserted against the Contractor in text form within one year of existence of the corresponding Performance Results, the Contractor shall transfer the exclusive rights to these performance results to the Principal in return for reasonable and customary remuneration; after such transfer, the Principal shall be entitled, but not obliged, to file an application for industrial property rights.

- Should inventions be created within the framework of contractual cooperation involving employees or agents of the Principal and of the Contractor, the rules governing the co-ownership by defined shares shall apply.

### § 11 Third-party rights

- The Contractor shall endeavor, using the care customary in the industry, to ensure that the Performance Items are free from third-party industrial property rights which exclude or impair the use of the service by or for the Principal in the country of the place of performance ("**Conflicting Industrial Property Rights**"). This effort does not include a search for Conflicting Industrial Property Rights or their evaluation ("**Industrial Property Right Search**").
- In individual cases, the Principal may agree with the Contractor to commission the performance of an Industrial Property Right Search with regard to the Performance Items. The client must specify the scope (in terms of content and territory) as well as the budget in advance and bear all costs incurred. Any affected Performance Periods shall be extended by the duration of the property right search. The client acknowledges that even if a search is carried out with the greatest thoroughness, it is impossible to find all relevant conflicting industrial property rights of third parties and that the evaluation of a possible infringement will always be burdened with uncertainties due to the necessary interpretation of conflicting industrial property rights found.
- If the Principal becomes aware of Conflicting Industrial Property Rights, either through notification of the results of an Industrial Property Right Search carried out according to paragraph 2 above or through other means, the Principal may, at his discretion, (i) ask the Contractor to, at the Principal's expense, develop a technical solution which does not make use of the specifically designated Conflicting Industrial Property Rights (ii) order the Contractor to temporarily suspend performance against reimbursement of costs, in order to take action against the Conflicting Industrial Property Rights or to acquire a license thereto, or (iii) terminate the contract with the Contractor with the consequences in accordance with section 17 clause 2 of this GTC.
- If claims are asserted against the Principal by third parties due to an alleged infringement of intellectual property rights by Performance Items, the Principal shall inform the Contractor of this immediately in text form, not acknowledge an infringement and reserve all means of defense for himself as well as for the Contractor. If the use of such Performance Items is discontinued, the Principal shall inform the third party that this discontinuance does not imply any acknowledgement of the infringement of industrial property rights.

### § 12 Rights of the Principal in case of defects

- The statutory provisions shall apply to the rights of the Principal in the event of material and defects in title (including incorrect and reduced delivery as well as improper assembly or defective assembly instructions), unless otherwise specified below. Statutory special provisions shall remain unaffected in all cases of final delivery of an unprocessed goods to a consumer, even if the consumer has further processed them. Claims arising from supplier recourse shall be excluded if a defective performance has been further processed by the Principal or by another business professional (e.g. installation in another product).
- The basis of the Contractor's liability for defects is the agreement reached on the quality of the performance. All descriptions of performance which are the subject of the individual contract shall be deemed to be an agreement on the quality. If the quality has not been agreed, it is to be evaluated according to the legal regulation whether a defect is present or not. The Contractor shall not be liable for public statements (e.g. advertising statements) made by a supplier or sub-supplier or other third parties, including statements of the Principal vis-à-vis its customers. Irrespective of this, the Principal shall be obliged to notify the Contractor immediately upon becoming aware of any case of recourse occurring in the supply chain.
- All claims based on the Contractor's statutory liability for defects (*warranty*) brought by the Principal presuppose that the Principal inspects the Performance Items immediately upon receipt, to the extent this is feasible in the ordinary course of business, and notifies the Contractor immediately in text form if a defect becomes apparent. If the Principal omits such notification, the Performance Items are considered approved to the extent defects are recognizable during such inspections. If a non-recognizable defect becomes apparent later, the notification must be made immediately, in any event within ten (10) working days, after discovery; otherwise the Performance Items shall be deemed to have been approved even in view of this defect. If the Principal accepts a performance with knowledge of a defect, he shall only be entitled to claims based on this defect if he expressly reserves the right to do so in writing at the time of approval.
- If Contractor's performance is defective and claims for defects are not excluded, Contractor may initially choose whether to provide Subsequent Performance by remedying the defect ("**Repair**") or by delivering a defect-free item ("**Replacement**"). The Contractor's right to refuse Subsequent Performance under the statutory conditions shall remain unaffected.
- The Contractor shall be entitled to render Subsequent Performance owed thereafter dependent on the Principal paying the amount due. However, the Principal shall be entitled to retain a reasonable part of this price in proportion to the defect.
- The Principal shall grant the Contractor the necessary time and opportunity for Subsequent Performance; in particular, the Principal shall hand over the objected performance for inspection purposes. If Subsequent Performance is provided by Replacement, the Principal shall return the defective performance to the Contractor pursuant to statutory

provisions. The Principal's demand for Subsequent Performance shall neither include the removal of a defective performance nor the reinstallation thereof, if installation was not part of the Contractor's original performance duties.

- Any expenditure necessary for the purpose of inspection and Subsequent Performance, in particular transport, travel, labor and material costs as well as dismantling and (re-)installation costs, shall be borne or reimbursed by the Contractor in accordance with statutory provisions if a defect actually exists. Otherwise, the Contractor may demand reimbursement from the Principal for the costs incurred as a result of the unjustified demand of the defect (in particular testing and transport costs), unless the Principal could not recognize the lack of defectiveness. Without express agreement, this cost bearing rule does not establish any claim on the part of the Principal to demand an advance payment from the Contractor to cover transport, travel, labor, material, installation or removal costs, even if the existence of the claimed defect has not yet been clarified.
- In an emergency (e.g. when operational safety is jeopardized or to prevent disproportionate damage), the Principal has the right to remedy the defect himself and to demand compensation from the Contractor for the objectively necessary expenses incurred. The Contractor shall be notified immediately, if possible in advance, of any such measures carried out by the Principal. The right of self-remedy does not apply, if the Contractor would be entitled to refuse Subsequent Performance pursuant to statutory provisions or if there was no defect at all which the Contractor would have been obliged to remedy.
- After the Contractor's second unsuccessful attempt of Subsequent Performance or after unsuccessful expiration of a reasonable deadline for Subsequent Performance set by the Principal, or if such deadline is dispensable according to statutory provisions, the Principal may withdraw from the contract or reduce the amount due. If the defect is insignificant, the Principal as no right of withdrawal.
- Claims of the Principal for damages or for reimbursement of futile expenses – even in the case of actual defects – shall only exist in accordance with section 13 of this GTC and are otherwise excluded.

### § 13 General liability of the Contractor

- Unless otherwise stated in these GTC, including the following provisions, the Contractor shall be liable in the event of a breach of contractual or non-contractual obligations in accordance with the statutory provisions.
- The Contractor shall be liable for damages as well as for reimbursement of unavailing expenditure – regardless of the legal basis – if he is to be held responsible for culpable intent and gross negligence. In the case of negligence, the Contractor shall be liable, subject to a milder standard of liability in accordance with the statutory provisions (e.g. care in his own affairs), only in the following cases:
  - for damage from injury to life, body or health,
  - for damage arising from the not-insubstantial breach of an essential contractual obligation (obligation, the fulfillment of which enables the proper performance of the contract and the observance of which the Principal regularly relies on and may rely on); in this case, however, the liability of the Contractor shall be limited to compensation for the foreseeable and typically occurring damage,
  - for damage arising from the not-insubstantial breach of the obligation to perform free of defects; in this case, however, the liability of the Contractor shall be limited to compensation for the foreseeable and typically occurring damage.
- In the case of section 13 paragraph 2 letter b of this GTC, both Contractor and Principal assume that the foreseeable, typically occurring damage does not exceed the sum of one (1) million Euro. The liability of the Contractor in the present case is thus limited to this sum. This limitation of liability shall not apply if the Principal indicates a higher value of foreseeable, typically occurring damage in text form in good time before placing the order, at the latest before commencement of performance. The total liability limit in cases matter shall then be the value stated by the Principal. If the stated value exceeds the amount of five (5) million Euro, the Contractor shall be entitled to extraordinary termination of the contract.
- In the case of section 13 paragraph 2 letter c of this GTC, both Contractor and Principal assume that the foreseeable, typically occurring damage does not exceed the price for the price being the maximum of a possible lack of value of the performance. The liability of the Contractor in the present case is thus limited to this sum. This limitation of liability shall not apply if the Principal indicates a higher value of foreseeable, typically occurring damage in text form in good time before placing the order, at the latest before commencement of performance. The total liability limit in cases matter shall then be the value stated by the Principal. If the stated value exceeds twice the amount of the price, the Contractor shall be entitled to extraordinary termination of the contract.
- Furthermore, in the event of loss of data, the Contractor shall only be liable should the Principal have ensured through a properly performed data backup that this data can be reconstructed at a reasonable cost and that the data backup is not part of the contractually agreed services of the Principal. Liability is limited to the amount of the effort required to restore the data.
- Unless otherwise agreed, the Contractor shall be liable for any infringement of conflicting industrial property rights only in the event of a breach of an obligation under section 11 clause 1 of these GTC. In this case, the Contractor shall have the right, at his discretion and expense, either to obtain a right to use the Conflicting Industrial Property Rights or to modify the performance concerned in such a way that the Conflicting Industrial Property Rights are no longer infringed. Claims of the Principal shall also be excluded to the extent as such an infringement of Conflicting Industrial Property Rights is caused by
  - a use or application of the performance which is neither known or communicated to the Contractor nor was foreseeable for the Contractor,
  - a modification to the performance made by the Principal,
  - a use of the performance in combination with goods not supplied by the Contractor.
- The limitations of liability resulting from section 13 clauses 2 to 6 of these GTC shall also apply in the event of breaches of duty by or for the benefit of persons whose fault the Contractor is responsible for in accordance with statutory provisions, in particular

# General Terms and Conditions (Sales)

## General Terms and Conditions of Sale and Delivery



his legal representatives, executive employees and vicarious agents. They shall not apply if the Contractor has fraudulently concealed a defect, if the Contractor has assumed a guarantee for the quality of a service and if the Contractor is legally liable, in particular in accordance with the Product Liability Act.

8. In the event of a breach of duty which does not consist in a defect, the Principal may only revoke or terminate the contract if the Contractor is responsible for the breach of duty. A free right of termination of the Principal is excluded; said exclusion in particular includes the statutory right to terminate a contract dealing with the supply of movable things to be produced or manufactured at any time. Above that, the statutory prerequisites and legal consequences shall apply.

### § 14 Liability of the Contractor in the event of impossibility of performance

1. Should the Contractor refuse performance because the performance was already impossible at the time of conclusion of the contract or because it requires expenditure which is grossly disproportionate to the Principal's interest in performance, the Contractor shall be liable to the Customer for damages in lieu of performance to the extent he is responsible for the impossibility. A liability is excluded unless the contractor knew or should have known about the impossibility of performance. The Principal's claim for damages shall be limited to 10% of the value of that part of the performance which cannot be put to the intended use due to impossibility. This limitation shall not apply if liability is mandatory in cases of intention, gross negligence or due to injury to life, body or health; this does not imply a change in the burden of proof to the detriment of the Principal. The Principal's right to revoke the contract remains unaffected.
2. In case the impossibility of performance or the grossly disproportionate expenditure of performance occurs after conclusion of the contract, the Contractor shall be liable for damages, unless the occurrence was not foreseeable or avoidable

### § 15 Limitation of claims of the Principal

1. Claims for defects on the part of the Principal shall become statute-barred twelve (12) months after handover or delivery. If Acceptance is applicable, the statute of limitations shall commence upon Acceptance.
2. If the performance consists of a building or of a thing that has been used for a building in accordance with the normal way it is used (building material), or in the provision of planning and supervisory services for a building, and has resulted in the defectiveness of the building the limitation period shall be five (5) years from handover or delivery. In case a defect consists a real right of a third party on the basis of which return of the performance may be demanded, or some other right registered in the land register, the limitation period shall be thirty (30) years from handover or delivery. The limitation of claims according to paragraph 1 above shall also not affect any other special statutory provisions concerning the statute of limitations, in particular the special provisions concerning fraudulently concealment of a defect, concerning guarantee of the quality as well as concerning supplier recourse.
3. The above limitation periods shall also apply to contractual and non-contractual claims for damages by the client based on a defect in the performance, unless the application of the regular statutory limitation period leads to a shorter limitation period in individual cases – in which case this shorter period shall apply. Claims for damages on the part of the Principal pursuant to section 13 clause 2 sentence 1, section 13 clause 2 sentence 2 letter a and section 13 clause 7 sentence 2 of these GTC shall become time barred exclusively in accordance with the statutory limitation periods.
4. Neither the notification of a defect nor negotiations concerning a claim or the circumstances giving rise to the claim shall suspend the statute of limitation.

### § 16 Compliance responsibilities of the Principal

1. The Principal commits himself to comply with all applicable laws, ordinances and regulations ("**Legal Provisions**"), in particular Legal Provisions to combat corruption, restrictions of competition and unfair acts of competition as well as Legal Provisions on export control.
2. The Principal shall implement all necessary and appropriate measures to prevent corruption. In particular, the Principal commits himself neither to directly nor indirectly offer, promise or grant benefits or other advantages (e.g. money, monetary gifts or invitations, which do not have a predominantly operational character, as for example to sports events, concerts, cultural events, etc.) to employees and managing directors of the Contractor including their relatives, nor to offer, promise or have them offered in any other way by third parties. The Principal shall inform the Contractor immediately should its knowledge or a concrete suspicion of cases of corruption arise in connection with a contractual relationship with the Contractor or its performance.
3. The Principal shall take all necessary and appropriate measures to comply with European and national, and if necessary also international – in particular US-American – export regulations. This applies in particular to the export of Performance Items to sensitive buyer states or end-user states. All embargos shall be observed by the Principal. The sanction lists are precisely checked and adhered to by the Principal.
4. If the Contractor becomes aware that the Principal violates Legal Provisions of fighting corruption or export restrictions, the Contractor is entitled to terminate all contractual relationships.
5. The Principal shall indemnify the Contractor against all claims, fines or other sanctions which arise against the Contractor due to violations of Legal Provisions by the Principal – in particular violations against anti-corruption law and export control law – in connection with the performance of the Contractor.

### § 17 Revocation and termination

1. Apart from the cases mentioned above in this GTC, the Principal shall not be entitled to revoke the contract due to a performance not rendered, or due to a performance not

rendered in accordance with the contract, if the Contractor is not responsible for such breach of duty. This shall not apply if special agreements (e.g. when time is agreed to be of the essence) result in a right of revocation on the part of the Principal regardless of fault; in such cases the statutory provisions shall apply.

2. If the Principal terminates the contract, the Contractor shall in principle be entitled to the agreed remuneration, taking into account any expenses saved as a result of the termination of the contract or acquired or maliciously omitted to acquire through other use of his labor force.

### § 18 No solicitation

1. With respect to personnel of the Contractor rendering performances for the Principal ("**Employees**"), the Principal will neither during performance nor up to two years after completion neither directly nor indirectly:
  - a. entice such Employee, or cause them to give up their employment with the Contractor,
  - b. hire or attempt to hire such Employee, unless the employment relationship of the Employee concerned with the Contractor was terminated more than one year prior to such hiring.
2. In the event of violation of section 18 clause 1 of this GTC, the Principal shall pay to the Contractor liquidated damages amounting to two gross annual salaries which the Employee received from the Contractor in the year prior to the year in which the contractual penalty arose. The amount is due within fourteen (14) days after the signing of the employment contract between the Principal and the Employee. Furthermore, the Contractor is entitled to terminate all contractual relations with the Principal for good cause.

### § 19 Right to subcontract

Unless agreed otherwise, the Contractor shall not be obliged to render his performances in person; he may subcontract or commission the performance obligations incumbent upon him in whole or in part.

### § 20 Applicable law and place of jurisdiction

1. The laws of the Federal Republic of Germany – under exclusion of its conflict-of-laws regulations and excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG) – shall apply exclusively to these GTC as well as to all contracts concluded on basis thereof and all contractual relations between the Principal and the Contractor.
2. To the extent that the Principal is a merchant, a legal entity under public law or a special fund under public law, the exclusive – also international – place of jurisdiction for all disputes arising directly or indirectly from a contractual relationship shall be Fulda, Germany. The same applies if the buyer is a business professional. In all cases, however, the Contractor shall also be entitled to bring an action at the place of performance under this GTC respectively at the place of performance under a prior individual agreement or at the general place of jurisdiction of the Principal. Mandatory legal provisions, in particular regarding exclusive jurisdiction, shall remain unaffected.

### § 21 Final provisions

1. Place of performance for the delivery is the respective shipping point, for the payment Fulda, Germany.
2. Customary clauses shall be interpreted in accordance with Incoterms 2020.
3. To the extent permitted by statutory provisions on the admissibility of prohibitions of assignment, the transfer of rights and obligations arising from contractual agreements shall require the consent of the Contractor in order to become effective.
4. Should individual clauses of this GTC – or of any other contractual agreement between the Principal and the Contractor – be wholly or partially invalid for reasons other than due to the statutory provisions on standard business terms, or become so later, this shall not affect the validity of the remaining provisions and regulations, unless upholding the contractual relationship would constitute an unreasonable hardship for the Principal or for the Contractor taking the following into account: The Principal and Contractor are aware of the jurisdiction of the German Federal Court of Justice, according to which a severability clause merely reverses the burden of proof. However, it is the express will of the Principal and the Contractor to maintain the validity of the remaining clauses and agreements under all circumstances and thus to totally exclude the statutory provision specifying that, in general, invalidity in total is to-be-assumed when there is invalidity on a part. In case there is a loophole or gap in the contract, the remaining clauses and agreements shall remain valid. The ineffective or unenforceable provision shall be replaced by an appropriate, lawful provision which comes as close as possible to what the Principal and Contractor intended or would have intended with the ineffective provision if they had considered this point at the conclusion of the contract or at the later commencement of the contract.