

## I. General

1. These terms and conditions apply to all deliveries and services by Zeppelin Power Systems GmbH Co. KG to businessmen and companies, particularly to the sale and delivery of goods, the provision of services (e.g. repair, inspection and maintenance) and the provision of technical staff. They also apply to all deliveries and services to be provided in the future.
2. Other terms and conditions shall only become components of contracts if they are expressly included in the contract by way of separate agreement. We hereby object to any terms and conditions provided or referred to by you. We shall not recognise these even if we do not object to these again separately once they have been received by us.
3. Unless otherwise agreed our offers shall be non-binding. The documents associated with the offer such as illustrations, drawings, weights, dimensions and specifications are only approximations and remain non-binding unless expressly described as binding.
4. A contract shall only be concluded – unless otherwise expressly agreed – when we issue written order confirmation. If no immediate objection is made to the written order confirmation, this shall be decisive for the content of the contract and the scope of the services to be provided. Collateral agreements and amendments to the contract must be confirmed in writing by us.
5. We reserve property rights and copyrights in samples, cost estimates, drawings and similar tangible and intangible information – including information in electronic form –; these shall not be made accessible to third parties.
6. Unless otherwise agreed, the respective most recent version of the INCOTERMS shall be decisive for the interpretation of delivery clauses.

## II. Cost Estimates, Prices and Payment

### 1. Cost Estimates

- 1.1. On request we can give you an estimate of the costs which you can expect to be incurred for the services to be provided by us in the form of an estimate or pro forma invoice on conclusion of the contract. The cost estimates/pro forma invoices shall be based on the average costs in our experience. The information provided in the cost estimates/pro forma invoices is not binding.
- 1.2. If you would like a cost estimate with binding prices before we provide our services you must expressly request such. Such a cost estimate is only binding if it is provided in writing and is expressly described as binding by us.
- 1.3. We do not, in principle, invoice for the services provided in connection with the cost estimate separately if these can be used during the later repair. If the agreed services cannot be provided for reasons for which we are not responsible, in particular because
  - o you do not authorize the repair
  - o the error objected to did not occur during fault diagnostics ,
  - o replacement parts cannot be obtained anymore,
  - o you did not provide mandatory co-operation,
  - o the contract was terminated whilst the work was being carried out,

you are obliged to pay for the services provided and any further costs incurred (e.g. travel expenses, costs of identifying the error) up until provision of the cost estimate.

- 1.4. If provision of our services is connected with the provision of technical staff, we can make the provision of our staff dependent on you having paid a reasonable agreed advance on the invoiced amount of the cost estimate/pro forma invoice and the expected return travel expenses before the journey begins.

### 2. Prices

- 2.1. Unless otherwise agreed in writing, goods delivery prices are "Free Carrier" (FCA) excluding packaging. Statutory VAT is charged on top of the prices. The prices are calculated on the basis of EUR. In the case of sales in other currencies, you shall bear the conversion risk for deviations from the daily rate at the time when the payments are credited to our account vis-à-vis the rate applied in our conversion.

We are entitled to pass on to you cost increases which result from increases in wage and material costs and price increases by our suppliers in return for proof hereof.

- 2.2 Other services shall be invoiced, unless a fixed price has been agreed in writing, after effective expense at the prices valid when services are performed. You shall bear taxes, customs duties, transport and packaging costs.
- 2.3. Unless a fixed price has been agreed in writing, when calculating the remuneration to be paid for the services of our technical staff, our "charge rates for after-sales service", in the version applicable at the time service are performed, shall apply which we would be pleased to provide on request. The remuneration is excluding statutory VAT which is also due to us. You shall bear all travel expenses of our staff in connection with the contract and transport, freight and customs charges, insurance costs for instruments and tools and personal luggage, also costs of telegrams, long-distance telephone calls, etc., also any special equipment necessary, cost of vaccinations, additional health insurance, taxes, charges and similar.
- 2.4 Costs in connections with the providing of staff are regulated in Para. VI. 12. of these conditions.

### **3. Payment / Default**

- 3.1 Unless not otherwise agreed, the payment shall be made without any deductions into one of our bank accounts, details provided, directly after receipt of the invoice. The remuneration of deliveries and (partial-)services and costs shall be invoiced at our discretion either weekly, monthly or after completion of the work.
- 3.2. You are only entitled to retain payments or to set off payments against counterclaims if we have expressly recognised your counterclaims or they have been ascertained finally and absolutely.
- 3.3. If you fail to settle due payment obligations, despite a reminder, we are authorized:
- o to demand settlement of any due accounts directly.
  - o to withhold services from uncompleted contracts.
  - o to activate retention of title and property rights (Para. VIII.)
  - o to withdraw from the contract and claim damages after fixing a deadline.
- 3.4 If you are in default of payment, we have the right to claim interests at 8% above the current basic rate, or at a minimum of 12%, on the arrears. Our right to claim arrears interests will be reduced if you can prove that none or a lower damage was caused by your delayed payment. We retain the right to claim higher damages if they are undisputed or proved.

### **III. Delivery/Acceptance**

#### **1. Deliveries of Goods / Remanufactured Parts**

- 1.1 You are responsible to take over the goods within five working days after the notification of readiness for pickup at the agreed delivery/transfer location.
- 1.2 If you require the delivery of goods it is at your liability and cost. The same applies to possible returns. Without constituting any liability the transport means will be selected on the basis of being the most cost-effective and quickest. Your specific transport instructions will only apply if they have been agreed in writing.
- 1.3 In the case of delivery of goods, the risk of loss, damage and resulting delays in delivery pass to you when the goods are taken over by the forwarding agent/freight carrier and at the latest when the object of delivery has left the works, even if part deliveries are still outstanding or if we have assumed other services, e.g. the freight costs or transport.
- 1.4 If we deliver carriage paid, you shall unload the means of transport immediately. In this case you will ensure that the goods are safely transported free of charge to the place of use and bear the costs and risk of unloading. You shall bear the costs of any waiting periods.
- 1.5 Part deliveries are permissible to the extent that can be reasonably accepted by you.
- 1.6 If you are in default with the acceptance or is a delay of services caused by you, the risk of loss or damages passes to you after our notification of readiness for pickup. From this date you are liable for all costs of storage (e.g. preservation) and any other occurring costs. Our right to claim further damages remains unaffected.
- 1.7 Along with the sale of remanufactured parts the title of the used parts passes over to us. You are obliged to return the used parts to us. The return may be delayed until the delivery of the remanufactured parts. The actual transfer of the parts will be substituted by your custody of the parts for us after the sale of the remanufactured parts. You affirm your unrestricted right to disposal of the used parts.

The used parts must be in an exchangeable, i.e. in a repairable and reusable condition. They have to match the remanufactured parts in quantity and type and have to be as complete as the remanufactured parts. Used parts have to be free of any defects resulting out of improper use that prevent the intended function, in particular but not reduced to fractures and cracks.

The return of used parts must be prompt but no later than two weeks after the delivery of remanufactured parts and on your expense.

If the condition of used engines by the time of delivery of a remanufactured engine differs to the condition of the used engine by the time of sale of the remanufactured engine, we are entitled to claim any relevant reduction in value of the used engine.

If the condition of the used parts returned by you fails our criteria, or the time limit for the return of the used parts has expired,

- we are entitled to invoice the difference between the price for remanufactured parts and the list price for new parts.
- no credit note for the return of the used parts will be given if the price for the remanufactured part is already based on the list price for new parts.

## **2. Service Level / Obligation to co-operate**

- 2.1 Unless otherwise expressly agreed in writing, objects to be repaired and provisions of material shall be sent to us at your cost and collected by you once the work is completed. In addition the regulations for deliveries of goods (Para. III.1) apply.
- 2.3 You are obliged to accept our works as soon as notification has been provided of the completion thereof and any contractually agreed testing has taken place. You are only entitled to refuse our works in the event of a significant defect. If acceptance is delayed and we are not responsible herefor, you shall be deemed to have accepted the work after one week from notification of completion of our works, at the latest, however, when you or the persons instructed by you take/s possession of or start to use the object.
- 2.4 If the agreed work cannot be carried out, the object to be worked upon shall only be returned to its original condition if you expressly request such and if you reimburse us for the costs incurred herefor, unless the work proposed and carried out by us must be regarded as not expedient - with respect to the time of implementation - on the basis of a proper estimation.
- 2.5 You are obliged to enable all works to be carried out, to undertake all necessary and required preparations as professionally as possible and to provide as much support as possible.

## **IV. Insurance**

1. On your express written request we will take out insurance for the risks you wish to insure at your cost for the transportation of goods and objects to be worked upon and for the time during which the objects and provisions of material are located at our premises. Otherwise we are not obliged to provide insurance cover.
2. You shall ensure that the insurance cover for the object to be worked upon and the provisions of material repaired is maintained during the period in which the object to be repaired is located at our premises.

## **V. Delivery and Repair Periods**

### **1. Delivery Periods / Default in Delivery**

- 1.1. The delivery period is indicated in the agreements between the contractual parties. The prerequisite for the observance of the delivery period by us is that all commercial and technical questions between the contractual parties have been resolved and that you have fulfilled all of your obligations, such as the provision of the official certificates or permits required, in-time provision of materials, making a down-payment or opening a letter of credit. If this is not the case, the delivery period shall be postponed by a reasonable period. This shall not apply if we are responsible for the delay.
- 1.2. The delivery period shall be deemed to have been observed if, by expiry of this period, the goods have left our works or are ready for dispatch and notification has been given hereof. If goods need to be accepted, the acceptance date shall be determinative, or alternatively the date on which the goods are reported as being ready for acceptance, – except in the event that acceptance is refused on justified grounds.
- 1.3. Observance of the delivery period is subject to ourselves having been supplied in a correct and timely manner.

- 1.4. If the contractually agreed delivery cannot be made because we have not been supplied by our own suppliers, we are entitled to rescind the contract. In the event that the contractually agreed performance should only be determined generically and we should not, respectively not punctually be supplied by a supply hedging transaction concluded for purposes of fulfilling contractual obligations, our contractual obligation (under reservation of self-delivery) shall lapse. However, we shall be under the obligation to notify you with regard to non-availability of the delivery item, without delay, and to immediately reimburse any possibly payment already received in this regard.
- 1.5. If failure to observe the delivery period was due to force majeure, industrial action, fire or other occurrences outside our sphere of influence, the delivery period shall be extended by an appropriate period. We shall inform you as soon as possible about the beginning and end of such circumstances.
- 1.6. If the dispatch or acceptance of the object to be delivered is delayed for reasons for which you are responsible, we shall be entitled to demand that you reimburse us for the resulting damage.
- 1.7 In the event that delivery should pertain to a commercial fixed-date transaction (§ 286 Para. 2 No. 4 "BGB"/ German Civil Code, § 376 "HGB"/ German Commercial Code), our liability shall be governed by the statutory provisions set forth under the laws of the Federal Republic of Germany.

The same shall apply, if you should be entitled to assert claims based on discontinuance of your interests in further performance of the contract due to any delivery delay attributable to us. In such a case, our liability shall be limited to predictable, typically occurring damage, if delayed delivery should not be based on any breach of contract attributable to us. In this regard we shall solely be liable in the event that intentional breach of contract is caused by our ordinary vicarious agents, as well as any intentional or grossly negligent breach by our representatives by operation of law and executives.

We shall also be liable towards you in terms of statutory provisions in the event of delivery delays, if such delay should be based on intentional or grossly negligent violation against the contract attributable to us; whereby any fault of our representatives or vicarious agents shall be deemed to be attributable to us. Our liability shall be limited to predictable, typically occurring damage, if delivery delay is not due to intentional breach of contract by us.

- 1.8 Otherwise, you shall be entitled to assert liquidated damages due to delay attributable to us amounting to 3% of outstanding delivery value for each completed week of delay, however to a maximum of 15 % of the outstanding delivery value.
- 1.9 Any further going liability for delayed delivery attributable to us shall be precluded. Besides claims for compensation of damages due to a delivery delay attributable to us, the other statutory claims and rights of the buyer, which it shall be entitled to in terms of the law, shall (subject to the provisions set forth under Clause X.) remain unaffected.

## 2. Completion dates for Services

- 2.1. The information regarding the completion of services is based on estimates and is therefore non-binding.
- 2.2. You can only demand agreement of a binding completion date, which must be described in writing as binding, if the scope of the work is precisely determined.
- 2.3. A completion date bindingly accepted by us shall be deemed observed if, by its expiry, the object to be worked upon is ready for acceptance by you, if testing is provided for in the contract, for the test run.
- 2.4. In the event of additional or supplementary contracts or necessary additional work, the agreed completion date shall be rescheduled accordingly.
- 2.5. Should the work be delayed as a result of force majeure, fire, industrial action, in particular strike or lock out, or as a result of circumstances for which we are not responsible, the completion date shall be reasonably rescheduled, provided that such impediments have an obvious influence on the completion of the repair; this shall also apply if such circumstances arise after a delay in performance by us.

## VI. Provision of Technical Staff

1. Our technical staff shall be selected with the care of a prudent businessman at our due discretion. We reserve the right to exchange our staff.
2. The normal working hours of our staff are stated in our effective "charge rates for after sales services".

We shall invoice you for any work carried out outside the stated regular working hours separately as overtime. The consent of our staff is required to working overtime.

If we provide technical staff and do not invoice herefor (work to remedy defects, etc.) these shall only work during the normal working hours. If overtime is carried out at your request, you shall bear the additional payments which result herefrom.

3. You are obliged to provide our staff with several copies of a receipt with stamp and signature of the timesheet to be submitted to you and to confirm in writing that the work has been completed even if you want to raise objections. Your right to raise objections shall not be affected hereby.
4. All preparatory work must be complete before commencement of our work. You shall provide the equipment, tools and other aids (in particular lifting equipment, scaffolding, energy, grease, cleaning materials, fuel and water) necessary for the work at your own cost in due time before commencement of the work.
5. If required by the type and scope of the contract, you shall provide our staff with the following in close vicinity to the place of work:
  - o suitable and lockable means of storage to store tools, material, etc.;
  - o suitable and lockable changing rooms with washing facilities;
  - o suitable and furnished offices which can be locked and which are equipped with telephone and fax (telefax);
  - o toilets and drinking water at the place of work.
6. You will provide us with suitable assistants to the extent required, who can be determined by us if necessary, at your cost. The persons provided by you shall have their own tools.

If necessary, you will provide a competent interpreter at your cost during implementation of the contract at the place of work.

7. You shall be responsible for the safety of the workplace, observance of the relevant safety provisions and for ensuring reasonable working conditions for our staff.

You shall point out particular risks to us which could result from the work. You shall inform our staff about particular conditions at the workplace under which the contract is to be carried out and about particular risks which could result at the workplace or in using the equipment and tools provided by you. You will ensure that any reasonable request made by our staff regarding additional safety measures is met.

You are aware that our staff must strictly observe the statutory, trade union and works safety provisions applicable in Germany when carrying out their work. You shall ensure that the conditions of the workplace permit these provisions to be observed.

You shall inform our staff without special request if in the course of the work it is possible that they will come into contact with or release hazardous substances or such which present a health risk. You undertake, in particular, to inform our staff about the use or the existence of asbestos-containing materials in the workplace and give our staff an exact specification of the solvent-containing materials provided by you for the work.

You are aware that after work in which asbestos-containing substances could be released, ventilation periods of up to 24 hours might have to be observed during which the work must be interrupted. Such interruptions shall be deemed working hours of our staff. Our staff shall determine the length of interruptions unless you can prove by providing a test report from a permitted testing institution that the area was already asbestos-free.

You alone are responsible for proper disposal of all hazardous materials which result from the work carried out by our staff.

8. Non-observance of the above provisions entitles our staff to interrupt their work. Remuneration shall continue to be paid during such interruptions.
9. You are not entitled to involve our staff in work other than that expressly agreed in the contract.
10. You agree with us that, even if we expressly assume the duty in writing in the contract to supervise and direct the work carried out by your staff, we are unable to supervise every single step carried out by every single one of your employees. We are therefore, even in this case, not obliged to supervise every single individual activity and every single step carried out by your staff.
11. You shall provide us with all support necessary and reasonable to obtain visas and other necessary permits or certificates in order to ensure that our staff can commence work in due time at the place of work and can return to their country of residence. You shall also assist us in handling the customs formalities.
12. You have to bear all travel expenses for the personnel ordered by you.

The travel expenses include the costs of trips home during the period of work. In Germany the respective collective bargaining agreement applicable to our company shall apply, which regulates the additional working conditions and payments for employees active outside of the operation's works. In the case of work abroad, this applies



in particular to the Easter, Whit and Christmas public holidays and to a trip home every three months if the work extends over an uninterrupted period of more than three months. If we are forced to withdraw our staff for a reason for which we are not responsible, you shall also bear the resulting costs hereof.

We shall charge an allowance for accommodation, food and pocket money for our staff in accordance with the maximum rates permitted by tax law per calendar day in Germany. We are also entitled to demand reimbursement of actual costs incurred instead of the allowance calculated as set out above. You undertake to assist on our request in finding suitable accommodation.

All costs for the insurance of instruments and tools, personal luggage, telecommunication etc., furthermore special equipment, fees for inoculations, additional private health insurance are part of the travel expenses according to this clause.

You shall reimburse all taxes and social charges which are incurred outside Germany and the usual place of taxation of our staff by us or our staff as a result of this contract.

In the event that our staff are injured or fall ill, you shall ensure that they receive the necessary medical care and – if necessary – that they are taken to a suitable hospital and inform us immediately. You undertake to pay any costs up front (particularly abroad). We will reimburse you therefor in return for the corresponding invoices.

## **VII. Use of Software / Reverse Engineering**

1. Should the scope of delivery contain software, you shall be granted a non-exclusive right to use the software supplied including the associated documentation. This right is granted for use with the specific goods delivered. The software shall not be used on more than one system.
2. You may only reproduce, modify, translate the software or convert it from the object code to the source code to the extent permitted by statute. You undertake not to remove manufacturer's data – in particular copyright data – or to alter it without our express consent.
3. We or the software supplier retain/s all other rights in the software and the documentation including the copies. You shall not be permitted to grant sub-licences.
4. You may not imitate or commercially exploit any of the deliveries in any way (including but not limited by way of so-called "reverse engineering") or let any other person or entity imitate or commercially exploit any of the deliveries in any way.

## **VIII. Securities / Retention of Title**

1. We reserve title in all goods delivered and in all accessory and replacement parts and exchange elements until fulfilment of all claims, in particular the respective balance claims, irrespective of legal grounds, to which we are entitled against you. This shall also apply if you make payments on claims specifically described.
2. Processing of the reserved goods shall always be for us as manufacturer without putting us under any obligation; the processed goods shall be deemed reserved goods. If the reserved goods are processed using other items, we shall acquire co-ownership of the new item in the ratio of the value of the object delivered to the other processed items at the time of processing. The same terms shall apply to the item which is created through processing as those which apply to reserved goods. If the newly produced item can be qualified as principal thing ("Hauptsache") according to § 947, Para. 2 of the German Civil Code, you offer the co-ownership to us; we accept this offer herewith.
3. You may neither pledge nor transfer the goods delivered as security. You shall notify us without undue delay of any pledges and seizures or other disposals by third parties. You are entitled sell the reserved goods in the ordinary course of business. You hereby assign to us all receivables up to the amount invoiced by us (including VAT) which you accrue from the resale to the customer or third parties. The same shall apply for possible claims for damages. You shall still be entitled to collect the receivables after this assignment. However, we reserve the right to collect the receivables ourselves if you do not properly observe your payment obligations.
4. We shall be entitled to a lien in the object of service which has come into our possession on the basis of the contract owing to our claims arising from the service contracts. The lien can also be asserted on the basis of claims arising from earlier work carried out, replacement part deliveries and other services to the extent that they are associated with the object of service.
5. In the event of conduct in breach of contract by you, in particular in the case of delay in payment, we are entitled to custody the goods supplied after issuing a warning and you are obliged to surrender them. If we assert reservation of title or pledge of the goods delivered, this shall not be deemed to be withdrawal from the agreement.

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6. The application for the commencement of insolvency proceedings regarding you or your assets entitles us to withdraw from the contract and to demand immediate return of the goods delivered.
7. In the event that the exploitable value of our goods under reservation of title should exceed our total receivables against you by more than 20 %, we shall release the goods under reservation of title upon your request, if separable, up to the value threshold mentioned.
8. If the reservation of title agreed here or the assignment is invalid under the law of the country to which the reserved goods are delivered, the corresponding security agreed for the reservation of title and assignment in this country shall be deemed agreed. The security must be provided in each case in such a way that the rights of the supplier are also guaranteed in the event of insolvency. If your cooperation is required to obtain such rights, you undertake to take all measures necessary to justify and maintain these rights.

#### **IX. Warranty / Provisions / Liability / Statute of Limitations**

1. To preserve your warranty claims you shall inspect the goods delivered and protest against defects according to section 377 German Commercial Code. If you omit to protest against defects, the goods shall be deemed to have been accepted, unless the defect is one which could not be recognised on inspection. If such a defect is discovered later, you shall inform us within one week after discovery. Otherwise the goods shall also be deemed to have been accepted with regard to this defect.

In the same way, you shall be obliged to inform us, without delay, after detection of any damages attributable to us, which are caused due to breach of duty during contract negotiations (*culpa in contrahendo*), breach of other obligations and actions of tort. In the event that you should default on such notification, you shall lose all and any claims based on damages in question.

2. You shall also inspect all other services provided by us, in particular services and supervisory services of our technical staff on acceptance and if there are any defects, you shall inform us thereof without undue delay. If you omit to inform us, the service provided by us shall be deemed to have been accepted, unless the defect is one which could not be recognised on inspection. If such a defect is discovered later, you shall inform us without undue delay after discovery. Otherwise the service provided by us shall also be deemed to have been accepted with regard to this defect.
3. In the event that any alleged material defect reported by you should also be eliminated by us without express objection, this shall not be deemed to constitute acknowledgement of a claim for warranty. If it should transpire within a period of three months, such period calculated as of completion of repair, that no claim for warranty actually existed, the services rendered as regards elimination of damages shall be remunerated.
4. If any defect should be prevalent, we shall be entitled to, at our own discretion, select supplementary performance through elimination of defect (rectification of defect) or delivery of defect-free goods. No claim on supplementary performance or any specific manner of handling such supplementary performance shall exist. In the event that the purchase price has not yet been fully or only partially paid, subsequent performance may – by taking into account the defect asserted – be made subject to the condition that part of the purchase price be paid.

You shall be entitled to select reduction (abatement) of the purchase price or to withdraw from the contract and assert claims for compensation of damages in accordance with the regulations set forth under Clause X., if we should seriously and conclusively refuse subsequent performance or if subsequent performance should have failed, should be unreasonable upon you or if an appropriate deadline for supplementary performance has been set and proven to be futile. This shall not apply if we should be entitled to reject supplementary performance on the basis of statutory regulations.

In the event of eliminating defects, we shall bear all necessary costs, if such costs should not be increased due to the fact that the contractual subject matter is located at a different place than the place of performance.

Subsequent performance shall at the earliest be deemed abortive after the second attempt has failed, if no further attempts to subsequent performance should be appropriate or reasonable upon you due to the subject matter of the contract. Claims for compensation of damages based on defect may only be asserted by the buyer once subsequent performances have proven to be abortive under the following terms and conditions:

5. Your right to rescind the contract after unsuccessful subsequent performance is excluded if the rescission of the contract would entail expenses which, taking into account the content of the agreement, would be in obvious disproportion to your interests in reversal.
6. Any and all further liability for material defect shall be precluded, unless if such defect has been concealed by us maliciously or if we have taken over written warranty assurance for the characteristics of such object. The buyer's

right to assert claims for compensation of damages based on other cause in law in terms of Clause X, shall remain unaffected by this Clause IX.

- Used objects of purchase shall, if nothing to the contrary has been agreed, be sold under exclusion of any and all warranty whatsoever. The condition of the objects of purchase at the point in time of handover to you shall be authoritative for assessing condition as regards assured characteristics in compliance with the contract. This shall also then apply, if the purchased object should not reflect any apparent defects, which were not specified in the contract of purchase at the point in time of handover or upon conclusion of the contract. Remanufactured and reconditioned parts shall be deemed to be used objects within the definition of this regulation.

## **X. Liability**

- We shall not be liable in the event of negligent violation of minor contractual obligations. If negligence should be addressed under this clause, gross negligence shall not be meant thereby.

In the event of grossly negligent breach of contractual obligations, which in the first place permits due and proper performance thereof and where compliance therewith is regularly trusted by a purchaser and may be trusted (cardinal obligations, fundamental contractual obligations); our liability shall be limited to predictable and typically occurring damage according to such type of performance.

Compensation for consequential damages, e.g. lost profits, in case of a negligent violation of obligations shall be precluded.

The same shall apply to grossly negligent breach of obligation against minor contractual obligations caused by our ordinary vicarious agents.

This limitation of liability and non-liability shall also apply to claims based on fault at the time of concluding the contract (*culpa in contrahendo*), other breach of obligations and tort. This shall not apply to cases of health effects, human injury or loss of life attributable to us or claims in terms of product liability law.

- Our liability shall under all circumstances be limited to a maximum sum of liability to the aggregate of EURO 5 million, except in the case of intent, gross negligence by our organs or executives and in the case of health effects, human injury or loss of life, in the case of claims based on the product liability laws as well as in the event of intentional or grossly negligent violation of cardinal obligations / fundamental contractual obligations. Any higher maximum amount of liability shall expressly be agreed in the written form. Upon your express and written request, we shall conclude appropriate third party liability insurance, at your costs, covering damages to be individually agreed with a sum of coverage exceeding this maximum sum of liability. This limitation of liability shall not apply to health effects, human injury or loss of life.
- We shall not be liable for damages, which are caused by sole fault of any person deployed by you, even not if such individual should be supervised by our technical staff and receive instructions at the time of rendering services.
- The limitation of liability mentioned hereinbefore shall also apply to claims against our staff, employees, labourers, representatives and vicarious agents.

## **XI. Limitation**

- Subject to deviating written agreement, claims due to you based on defect shall become statute barred at the latest after 12 months. This limitation deadline shall commence upon delivery of objects, however at the latest on the day of taking delivery and in the case of rendering other services, on the day of acceptance.
- Claims arising from fault at the time of concluding the contract (*culpa in contrahendo*) and other breach of contractual obligations shall become statute barred at the latest after 24 months. Limitation deadline shall commence on the day on which you become aware of the circumstances constituting such claim or should have become aware of such circumstances, if you were not grossly negligent. Irrespective of your knowledge or grossly negligent lack of knowledge, such claims shall become statute barred, with the exception of claims based on health effects, human injury or loss of life or deprivation of liberty at the latest after 5 years as of its emergence. This provision shall not be applicable to claims arising from or in connection with product liability.
- In deviation of § 212 Para. 1 No. 1 "BGB", the statute barring limitation period set forth in the provisions hereinbefore as regards claims you are entitled to shall solely be revived, if we expressly acknowledge such claims to you in writing.
- The before mentioned statute barring regulations shall also apply to claims against our staff, employees, labourers, representatives and vicarious agents.

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## **XII. Export control**

1. The contract shall be subject to the condition precedent that any necessary export licences are issued by the competent authority or that it is established that an export licence is not required. In addition, the contract is subject to the condition precedent that no other applicable embargo or sanction provisions conflict with the performance of the contract. You are obliged to provide immediately all information and documents required for the export or transfer cross-border within the European Union if we take on the application for the permit. Deadlines and delivery times shall be extended accordingly due to delays due to export inspections or licensing procedures as well as culpably delayed provision of the information and documents required for export or shipment. For the aforementioned delays, claims for damages shall be limited to the extent and amount agreed to in these General Terms and Conditions.
2. You are obliged to comply with the applicable regulations of national and international (re-) export control law when passing on the goods supplied by us (hardware and/or software and/or technology as well as associated documents, irrespective of the manner in which they are provided) or the work and services provided by us (including technical support of any kind) to any third party in Germany and abroad.
3. Please be advised that due to the US-American percentage of the goods, the US-American re-export law is applicable. A resale to Iran, North Korea and Syria which is subject to the economic, trade or financial sanctions or embargos adopted by the United States of America with regard to Iran, North Korea and Syria is prohibited to the extent that it is not contrary to European or German legal provisions, in particular Council Regulation (EC) No. 2271/96 of 22 March 1996 on the International Sale of Goods (IPPC). November 1996, last amended by the delegated regulation (EU) 2018/1100 of the Commission of 6 June 2018 (EU Blocking Regulation), as well as § 7 of the Foreign Trade and Payments Regulation."

## **XIII. Supply chain security**

1. You warrant that you are an Authorised Economic Operator (AEO-F or AEO-S) or that you fulfil the following requirements regarding supply chain security: goods, which are produced, stored, forwarded or carried by our order, which are delivered to us or which are taken for delivery from us,
  - are produced, stored, prepared and loaded in secure business premises and secure loading and shipping areas, and
  - are protected against unauthorized interference during production, storage, preparation, loading and transport

Furthermore, you warrant that reliable staff is employed for the production, storage, preparation, loading and transport of these goods, that business partners who are acting on your behalf are informed that they also need to ensure the supply chain security as mentioned above and that this also applies to service providers at your location.

2. The AEO-F or AEO-S certificate has to be proven immediately, at the latest upon first delivery by way of submitting a copy of the official certificate. In case you are not an Authorised Economic Operator, you will immediately, at the latest upon first delivery, submit a security declaration according to which you undertake to comply with the above stated requirements regarding supply chain security. Once you do not comply with the requirements stated in the security declaration any more, you shall inform us immediately.

## **XIV. Applicable Law, Place of Jurisdiction**

1. The law of the Federal Republic of Germany shall apply exclusively to all legal relationships between you and us. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
2. The place of jurisdiction for all legal relationships between you and us shall be Hamburg. However, we are entitled to file claims against you at any place where there is jurisdiction against your company on the basis of the applicable legal provisions.

## **XV. Miscellaneous**

1. This agreement does not grant rights to third parties. An assignment of rights and claims under this agreement by you requires our prior written consent to be valid.
2. We save and process personal information in the framework of the Federal Data Protection Act (*Bundesdatenschutzgesetz*) in order to carry out the contracts granted to us.
3. Foreign principals shall submit a certificate without undue delay which states that the goods are to be sent abroad.

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If it is not possible to obtain such a certificate, you or the party instructed by you must confirm on the transfer papers or the delivery note receipt of the goods and that the goods will be shipped abroad. This also applies in the event that you collect the goods yourself. In the event of non-observance of this provision or non-fulfilment of other preconditions for VAT-free delivery, we must charge you VAT at the rate applicable in the Federal Republic of Germany which must then in this case be paid to us with the invoice amount.

4. All agreements concluded between the parties in connection with the sale and delivery of goods and rendering of services are specified in the written form in the respective purchase or service agreements, these terms and conditions of business and our confirmation of order.
5. In the event that individual contractual provisions should be entirely or partially invalid or become invalid, the remaining part of this agreement shall not be affected thereby; this shall also apply in the event that it should transpire that this contract contains any gaps. Any entirely or partially invalid provision shall be replaced by an appropriate provision, which – insofar as legally possible – comes as close as possible to the intent of the contractual parties or which the parties would have agreed upon within the objective of this agreement, if such event should have been contemplated at the time of contractual conclusion. The same shall apply to filling any gaps contained in this contract.
6. In the event of any deviance of this English version of the General Terms and Conditions from the German original version only the German original version shall be relevant and binding.