

General Terms and Conditions for Deliveries and/or Services

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1 General – Scope of application

- 1.1 For legal transactions concerning deliveries and/or services of Gabler Maschinenbau GmbH, Lübeck (hereinafter referred to as "Contractor"), these General Terms and Conditions for Deliveries and/or Services ("GTC") shall apply if the customer is a domestic or foreign company within the meaning of sec. 14 para. 1 German Civil Code, a legal person under public law or a special fund under public law within the meaning of sec. 310 para. 1 German Civil Code (hereinafter referred to as "Customer").
- 1.2 These GTC shall also apply to all future transactions concerning deliveries and/or services by Contractor arising from an ongoing business relationship with the Customer.
- 1.3 The application of conflicting and/or supplementary general terms and conditions by the Customer and/or those deviating from these GTC is hereby rejected. Such general terms and conditions shall only apply if and insofar as the Contractor has expressly agreed to their application in writing.
- 1.4 These GTC shall also apply in the event that the Contractor without reservation performs the delivery or service in the knowledge that the Customer's terms and conditions conflict with, supplement or deviate from these GTC.
- 1.5 Deliveries within the meaning of these GTC are deliveries of products, in particular of equipment, components and/or systems for watercrafts, as well as deliveries of spare parts on the basis of a purchase contract or a contract for the manufacture and delivery of a movable object within the meaning of sec. 650 German Civil Code.
- 1.6 Services within the meaning of these GTC are work performance and/or services, in particular installations, assembly services, commissioning, project planning and planning work, overhauls, repairs and inspections and consulting services.

2 Conclusion of contract / Materials

- 2.1 A contract with the Contractor shall only then be concluded effectively when the Contractor has accepted the order in writing which he received or when the Contractor has carried out the delivery and/or service ordered by the Customer. The same shall apply to requests by the Customer for additions, changes or extensions to the contractually agreed scope of delivery and/or performance.
- 2.2 Offers by the Contractor are non-binding unless expressly stated otherwise in the offer.
- 2.3 In the case of a delivery abroad or a service to be rendered abroad, the Contractor's offers shall only apply to the country of destination agreed in writing or – in the absence of an express agreement – to the country in which the Customer has its registered seat.
- 2.4 Information provided by the Contractor on the delivery item or service which is given to the Customer in documents or otherwise (e.g. dimensions, weights, performance values, technical data) is not a guaranteed characteristic, but only a description or marking of the delivery or service item. They shall be understood without the influence of any physical disturbances or other external influences, such as environmental disturbances, and shall only be binding if they expressly become part of the contract in writing.
- 2.5 The Contractor reserves all rights to all calculations, drawings, data, plans and other documents and materials (hereinafter referred to collectively as "Materials") provided to the Customer or otherwise made available –including in electronic form –, in particular all property rights and copyrights. The Customer may use and make use of the Materials and make them available to third parties only to the extent necessary for the purpose of fulfilling the contract. The Customer shall not be permitted to use the Materials and pass them on to third parties for other purposes not related to the contract in any way without the prior written consent of the Contractor. The Customer shall store the Materials diligently and protect them from unauthorized access by third parties.
- 2.6 Insofar as, in accordance with the contract, Materials required for the intended use of the delivery or service item are made available to the Customer together with the delivery or service item, the Customer shall be granted a non-exclusive right to use these Materials to the extent that the use of the Materials is required for the contractually stipulated and intended use of the delivery item or

service. Within the limits of this right of use, the Customer shall also be entitled to grant third parties corresponding rights of use to the Materials. The Customer is not permitted to use the Materials for other or additional purposes.

3 Prices

- 3.1 The Contractor's prices for deliveries and/or services shall always be net in EURO plus value added tax at the respective statutory rate.
- 3.2 For deliveries, prices are prices ex works excluding costs for packaging, shipping and other ancillary or additional costs (e.g. for installation and/or commissioning).
- 3.3 Unless expressly agreed otherwise, all customs duties, consular fees and other taxes, levies and fees levied outside the Federal Republic of Germany as well as any costs associated therewith shall be borne by the Customer in the event of a delivery abroad or in the event of services rendered abroad by the Contractor.
- 3.4 If in the case of deliveries abroad – in deviation of clause 3.3 – a delivery including the assumption of the costs for customs duties, fees and/or other levies by the Contractor has been agreed, the price quoted by the contractor in the offer shall be based on the price at the time of submission of the offer and the contractually agreed price shall be based on the rates for customs duties, fees and/or other levies applicable at the time of conclusion of the contract. The costs charged by the Contractor and to be paid by the Customer shall be the actual costs of customs duties, fees and/or other charges incurred at the time of delivery. Any value added tax will be charged additionally.
- 3.5 The agreed prices apply only to the respective delivery or order.

4 Delivery / service, cooperation by Customer

- 4.1 Unless agreed otherwise, delivery shall be Ex Works in accordance with Incoterms 2010. The place of performance for the delivery shall be the warehouse at the Contractor's registered office. This shall also apply if partial deliveries have been agreed or if it has been agreed that, after the delivery item has been brought to its final destination, the Contractor shall perform additional services at the destination with regard to the delivery item, such as mounting, assembly, installation or commissioning of the delivery item.
- 4.2 If shipment by the Contractor to a destination other than the warehouse at the Contractor's registered office has been agreed, the shipment of the delivery item shall be at the expense and risk of the Customer. In this case, the Contractor shall be entitled to determine the modalities of shipping (in particular transport company, dispatch route, packaging) itself. At the express request of the Customer, the Contractor shall insure the shipment at the expense of the Customer against theft, breakage, transport, fire and water damage and other insurable risks.
- 4.3 Unless expressly agreed otherwise, the Contractor shall be entitled to make partial deliveries unless this is contrary to the recognizable and reasonable interest of the Customer.
- 4.4 If it has been agreed that the Contractor shall additionally perform the assembly, mounting, installation, commissioning or performance of functional tests at the place of destination with regard to the delivery item, the Customer shall be obliged to make available to the Contractor timely and at its own expense and to a sufficient extent the equipment, instruments, operating and utility materials including power supply and other materials required for this purpose. At the Contractor's request, the Customer shall also provide auxiliary personnel in the required number for support at its own expense.
- 4.5 Special terms for transactions abroad
 - a) If, in the case of a delivery abroad, an end-use declaration in accordance with the requirements of the German Federal Office of Economics and Export Control (hereinafter "BAFA") is required in order to obtain an export permit, the Customer shall, unless otherwise agreed, timely, at the latest within four (4) weeks after conclusion of the contract, provide the Contractor with such a declaration or have such a certificate extended or renewed at the request of the Contractor, insofar as this is necessary for reasons of export law. Upon request,

the Contractor shall provide the Customer with an appropriate sample for an end-use declaration.

- b) Should further forms, documents or other information be or become necessary for the end-use declaration and/or otherwise in support of the application for an export permit, the Customer shall, upon request by the Contractor and in accordance with the requirements of BAFA, also provide these without undue delay. In the event of a final rejection of an application for an export permit for the ordered items, the Contractor shall be entitled to withdraw from the contract. The exercise of this right of withdrawal shall not entitle the Customer to damages.
- c) If the Contractor performs services abroad, the Customer shall, unless otherwise agreed, at its own expense and in good time ensure that the Contractor is granted all necessary permits for the import and export of tools, equipment and other supplies, to the extent that these are required.

5 Deadlines / dates, delay

- 5.1 Delivery and performance periods as well as delivery and performance dates shall only be binding if they have been agreed in writing in the contract. Unless agreed otherwise, the delivery or service period shall commence upon dispatch of the order confirmation by the Contractor. If an advance performance (e.g. provision of documents, plans, permits, releases etc.) and/or advance payment by the Customer has been agreed for the delivery or service, the delivery or service period shall not commence until the advance performance has been fulfilled and/or the advance payment has been received.
- 5.2 In the case of an Ex Works delivery, the delivery period or delivery date is met if the delivery item is ready for collection at the agreed place by the end of the period or delivery date. In the case of an agreed shipment of the delivery item, the delivery period or delivery date shall be deemed to have been met if the delivery item has left the Contractor's factory by the end of the period or by the agreed date at the latest.
- 5.3 A performance period or performance date shall be deemed to have been met if the contractual services have been performed within the agreed periods or by the agreed date. They shall also be deemed to have been complied with if minor reworking is still required or if the performance item still has insignificant defects, provided that the functionality of the performance item is only insignificantly impaired thereby.
- 5.4 The observance of deadlines or dates presupposes the timely receipt of all documents to be supplied by the Customer and all necessary permits and releases to be obtained (in particular of plans and drawings), the observance of the agreed terms of payment as well as the timely and proper fulfilment of other cooperation obligations by the Customer. If these prerequisites are not fulfilled in time, the deadlines shall be extended and/or the dates postponed accordingly. This shall not apply if the Contractor is responsible for the delay.
- 5.5 Delivery and performance periods shall be extended and delivery and performance dates shall be postponed by the duration of an impediment plus a reasonable start-up period due to force majeure or other unforeseeable circumstances for which the Contractor is not responsible, such as acts of terrorism, labor disputes and natural disasters. If the impediment lasts longer than six (6) months, the Contractor and the Customer are each entitled to withdraw from the contract. In this case, the Contractor may demand from the Customer the expenses incurred for the time until the discontinuation of the work. Claims for damages are excluded in this case.
- 5.6 The Contractor is not liable for the circumstances listed in the first sentence of the above clause 5.5 even if they arise during an already existing delay. The Customer's claim for compensation for damage caused by delay up to the time the respective circumstance occurs shall remain unaffected.
- 5.7 The Contractor shall be entitled to an appropriate extension of delivery and performance periods and/or to a postponement of delivery and performance dates if the Contractor makes changes, additions or extensions to the scope of delivery and/or performance at the request of the Customer.

5.8 The occurrence of the Contractor's delay in delivery or performance shall be determined in accordance with the statutory provisions. The Contractor shall not be deemed to be in delay if he is unable to meet a deadline or date due to late delivery by one of its suppliers, provided that the Contractor has timely concluded a covering transaction.

5.9 If the delivery is delayed at the request of the Customer, the Contractor shall be entitled to reimbursement of the costs incurred for further storage after one (1) month has elapsed after notification of the availability for collection or readiness for shipment.

6 Taking delivery and default of taking delivery

- 6.1 When due, the Customer shall take delivery / accept a service of the Contractor without undue delay upon request by the Contractor. This obligation is a main obligation of the Customer. The Customer may not refuse to take delivery or refuse services due to insignificant defects.
- 6.2 If the Customer is in default of taking delivery / accepting of a service, the Contractor shall be entitled to liquidated damages in the amount of 0.5% of the agreed order value per completed week of default of taking delivery / acceptance of service, however in the maximum no more than 5% of the agreed order value. The Contractor's right to prove and assert higher damages as well as other statutory claims of the Contractor shall remain unaffected. However, the liquidated damages shall be set off against any further claims. The Customer shall be entitled to prove that the Contractor has incurred no damage at all or only considerably less damage than the aforementioned liquidated damages.
- 6.3 The risk of accidental loss or accidental deterioration of the delivery item or service shall pass to the Customer at the point in time at which he defaults on taking delivery / accepting service.

7 Acceptance

- 7.1 Acceptance of the delivery or service shall only take place if this has been agreed in writing or is provided for by law. If acceptance has been agreed or is provided for by law, acceptance shall be carried out within 14 days of completion of the performance, unless expressly agreed otherwise. Acceptance may not be refused on the grounds of insignificant defects, in particular not on the grounds of defects which do not or only insignificantly impair the functionality of the delivery item or service.
- 7.2 If the Contractor has notified the Customer of the completion of the delivery or service to be accepted and the Customer does not refuse acceptance within a period of 14 days from the notification of completion by conclusively stating at least one defect, the delivery or service in question shall be deemed to have been accepted.
- 7.3 Acceptance of the delivery or service shall also be deemed to have been effected as soon as the Customer has made use of the delivery or service item for more than one week without giving notice of defects. This shall not apply if the use was unavoidable for the Customer due to special circumstances.
- 7.4 If the Purchaser waives an agreed acceptance or an acceptance provided for by law or if he is not present at the acceptance despite having been notified timely for reasons for which he is responsible, the acceptance test carried out by the Contractor shall be deemed as acceptance.
- 7.5 If, in addition to the final acceptance test, further preceding intermediate acceptance tests, in particular technical acceptance tests, such as a functional test in the factory of the contractor ("Factory Acceptance Test"), a test in the harbour ("Harbour Acceptance Test") and/or a sea acceptance test ("Sea Acceptance Test"), have been agreed, the provisions of this clause 7 shall apply mutatis mutandis to these intermediate acceptance tests with the exception of clause 7.3. Intermediate acceptance tests shall not be deemed acceptance in the legal sense pursuant to sec. 640 German Civil Code, unless otherwise agreed in the contract.
- 7.6 All costs for acceptance and any acceptance tests, including intermediate acceptance tests, shall be borne by the Customer. This includes in particular costs for supplies, materials, consumables, accessories, auxiliary equipment etc. as well as expenses for the Customer's own personnel and for certifiers, classification societies, other experts and any other persons who take part in the acceptance test on behalf of the Customer.

Excluded from this are the expenses for the Contractor's personnel. These shall be borne by the Contractor itself.

e) The above provisions a) through d) of this clause 8.3 shall not apply to the extent that the services performed on the Customer's items involve work to remedy defects.

8 Passing of risk

8.1 Passing of risk for deliveries.

- a) In the case of an Ex Works delivery, the risk of accidental loss and accidental deterioration of the delivery item as well as the risk of delay shall pass to the Customer as soon as the delivery item has been made available by the Contractor for collection at the agreed place of delivery. If dispatch of the delivery item by the Contractor has been agreed, the above-mentioned risks shall pass to the Customer upon transfer of the delivery item to the forwarding agent, the carrier or any other person designated to carry out the transport.
- b) If the Contractor takes items into its custody on behalf of the Customer, e.g. goods and/or materials provided by the Customer for the execution of the delivery or service, the custody shall be at his expense and risk. Unless otherwise agreed, the Customer shall be obliged to pay the Contractor the customary remuneration of a commercial warehouse keeper for storage. If the Customer is in default of acceptance, clauses 6.2 and 6.3 of these GTC shall apply exclusively.
- c) If an acceptance test has been agreed with regard to a delivery item, acceptance shall only be deemed to be the point in time of transfer of risk if it is a contract for work and services.

8.2 Passing of risk for on-site services

- a) The risk of accidental damage or accidental loss of the performance item as well as accidental deterioration of the work shall be borne by the Customer in the case of services provided on site, whether in connection with a previous delivery by the Contractor or without such delivery.
- b) Goods and materials provided by the Customer for the performance on site shall be taken into the custody of the Contractor in accordance with the agreements made in this respect for the purpose of rendering the performance. The risk of accidental loss and accidental deterioration of these goods and materials shall remain with the Customer. Clause 14 shall apply to damage to these goods and materials for which the Contractor is responsible.

8.3 Passing of risk in the case of services performed at the Contractor's factory

- a) If services are to be performed on items of the Customer at the Contractor's or its vicarious agents' premises, e.g. repairs, maintenance work or retrofitting, the Customer shall send the performance item to the Contractor in good time at its own expense and risk.
- b) If items of the Customer have been taken over by the Contractor for the purpose of rendering the service in accordance with clause 8.3 a), they shall be returned to the Customer at the expense and risk of the latter after rendering the service.
- c) If the return shipment to the Customer is delayed due to a circumstance for which the Customer is responsible or if the return shipment is made at the Customer's request on a later date than the agreed completion date, the risk of accidental loss and accidental deterioration shall pass to the Customer on the date of notification of readiness for shipment. The same applies to delays or impediments in the event of force majeure or other unforeseen circumstances for which the Contractor is not responsible.
- d) If collection has been agreed instead of return, the customer must collect the items within 14 days of notification of completion of the service. If this does not occur, the risk of accidental loss and accidental deterioration shall pass to the Customer upon expiry of the 14-day period and the Contractor shall have the right to return the items to the Customer without special notice at the Customer's expense and risk.

9 Retention of title to ownership

- 9.1 The Contractor shall retain title to the delivery items (hereinafter referred to in this clause 9 as "Retained Goods") until receipt of all payments under the relevant contract with the Customer including all payments for agreed extensions of the scope of delivery and any options exercised by the Customer. In the event of breach of contract by the Customer, in particular default in payment, the Contractor shall be entitled to withdraw from the contract and demand the return of the Retained Goods subject to retention of title to ownership due to the withdrawal if the statutory requirements are met. The Contractor's request to surrender the reserved goods shall always constitute a withdrawal from the contract. After taking back the Retained Goods, the Contractor shall be entitled to dispose of them; the proceeds of such disposal – after deduction of reasonable disposal costs – shall be set off against the Customer's payment obligations.
- 9.2 The Customer is obliged to treat the Retained Goods with care; in particular it is obliged to sufficiently insure them at its own expense against damage caused by fire, water and theft at replacement value. Insofar as maintenance and inspection work is necessary, the Customer shall carry this out timely at its own expense.
- 9.3 In the event of seizure of the Retained Goods or other interventions in the Retained Goods by third parties, the Customer shall notify the Contractor without undue delay in writing.
- 9.4 The Customer shall be entitled to resell the Retained Goods in the ordinary course of business; he hereby assigns to the Contractor all claims against his customers arising from the resale in the amount of the final invoice amount agreed with the Contractor (including value added tax), irrespective of whether the Retained Goods have been resold without or after processing. The Customer shall remain authorized to collect these claims even after assignment. The Contractor's authority to collect the claims himself shall remain unaffected. The Contractor undertakes not to collect the claims as long as the Customer fulfils its payment obligations towards the Contractor, does not default in payment and no application for the opening of insolvency or composition proceedings has been filed or payments have not been suspended. If this is the case, however, the Contractor shall be entitled to demand that the Customer informs it of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and notifies the debtor concerned of the assignment.
- 9.5 If the Retained Goods are resold together with other items without an individual price having been agreed for the Retained Goods, the Customer shall assign to the Contractor, with priority over the remaining claim, that part of the total price claim which corresponds to the price of the Retained Goods invoiced by the Contractor.
- 9.6 The processing or transformation of the Retained Goods by the Customer shall always be carried out for the Contractor. If the Retained Goods are processed with other items not belonging to the Contractor, the Contractor shall acquire co-ownership of the new item in the ratio of the value of the Retained Goods to the other processed items at the time of processing. In all other respects, the same as to the Retained Goods shall apply to the new item created by processing.
- 9.7 If the Retained Goods are inseparably mixed with other items not belonging to the Contractor, the Contractor shall acquire co-ownership of the new item in the ratio of the value of the Retained Goods to the other mixed items at the time of mixing. If the mixing is carried out in such a way that the Customer's item is to be regarded as the main item, it shall be deemed agreed that the Customer transfers proportional co-ownership to the Contractor. The Customer shall keep the sole or co-ownership thus created in safe custody for the Contractor.
- 9.8 To secure the Contractor's claims against him, the Customer shall also assign to the Contractor any claims against a third party arising from the combination of the Retained Goods with a plot of land or a vessel.
- 9.9 The Contractor undertakes to release the securities to which he is entitled at the request of the Customer to the extent that the value of the security exceeds the claims to be secured by more than 10%;

the selection of the securities to be released shall be incumbent on the Contractor.

- 9.10 Should the above clauses on ownership not be effective under the law of the country in which the delivery item is located, it shall at least be deemed agreed that the ownership of the delivery item shall remain with the Contractor until all payments arising from the corresponding contract with the Customer have been received. Should this also be inadmissible but the law of the country in which the delivery item is located allows the Contractor to reserve other security interests in the delivery item, the contractor may exercise all such rights. The Customer shall be obliged to cooperate in the measures taken by the Contractor to protect his title to ownership or any right in delivery item which takes its place.

10 Payments

- 10.1 All payments by the Customer shall be made to the Contractor within 14 days of receipt of the respective invoice without any deduction. The Contractor shall be entitled to make partial invoices. Payment deadlines shall be deemed to have been met when the Contractor is able to dispose of the payment amount within the specified deadline.
- 10.2 The Contractor shall accept bills of exchange - if at all - only after prior written agreement and only subject to their discountability and on account of performance. All discount charges and other ancillary costs shall be borne by the Customer and shall be reimbursed to the Contractor immediately. Bills of exchange and cheques shall only be credited when the countervalue is credited to the Contractor without reservation.
- 10.3 In the event of default in payment, the Contractor shall be entitled to demand interest on arrears at the rate of 9 percentage points per annum above the respective base interest rate from the date of the default. The Contractor reserves the right to assert further claims.
- 10.4 If the Customer ceases payments, if there is overindebtedness or if insolvency proceedings are applied for or if the Customer is in default with several payment obligations, the total claim of the Contractor from current contracts shall become due immediately.

11 Assignment / set-off / retention

- 11.1 The Customer shall not be entitled to assign rights and/or obligations arising from the contract or claims existing against the Contractor in whole or in part to third parties without the prior written consent of the Contractor. However, this shall not apply to monetary claims pursuant to sec. 354a para. 1 German Commercial Code.
- 11.2 The Customer shall only be entitled to set-off if and to the extent that his counterclaims have been legally established (final and binding), are undisputed or have been acknowledged by the Contractor.
- 11.3 The Customer shall only be entitled to exercise a right of retention or a right to refuse performance if his counterclaim is based on the same contractual relationship and either
- his counterclaims are legally established (final and binding), undisputed or acknowledged by the Contractor or
 - if it asserts defects in the delivery item or service item and these defects have been ascertained, acknowledged by the Contractor or at least credibly demonstrated by the Customer (e.g. by written confirmation of an independent expert).
- 11.4 The Contractor is entitled to set-off and retention rights to the extent permitted by statutory law.

12 Liability for defects

The Contractor shall be liable for defects in goods and services as follows:

- 12.1 If the Customer is a businessperson, claims for defects in the case of a delivery shall be subject to the Customer giving written notice of obvious defects to the Contractor immediately, at the latest within 12 days of receipt of the delivery. Hidden defects shall be notified to the Contractor in writing by the Customer immediately after their discovery. If the Customer fails to give timely and proper notice of a defect in accordance with the foregoing provisions, the respective delivery item shall be deemed to have been approved in respect of the defect and claims based on the defect shall be excluded.

- 12.2 Claims based on defects shall not exist if there are only insignificant deviations from the agreed quality of the delivery item or service or only an insignificant impairment of usability.
- 12.3 If the Customer carries out performance measurements or other performance checks to prove a defect, acknowledgement by the Contractor shall require that a representative delegated by it for this purpose takes part in the measurements and checks. In any case, however, the Contractor reserves the right to inspect the delivery item or service itself and to carry out its own measurements and inspections.
- 12.4 If there is a defect in the item of delivery or service, the Customer shall first give the Contractor the opportunity, within a reasonable period to be set by the Customer, to remedy the defect at the discretion of the Contractor either by remedying the defect free of charge, providing a service anew or supplying a replacement, whereby the Contractor shall be entitled to at least two attempts at subsequent performance.
- 12.5 Subject to the provisions of clause 12.6 below, the Contractor shall bear the expenses necessary for the purpose of subsequent performance, in particular transport, travel, labor and material costs, unless subsequent performance entails disproportionate costs for the Contractor.
- 12.6 In deviation from clause 12.5, however, the Contractor shall not bear the expenses for subsequent performance to the extent that the expenses are increased by the subsequent transfer of the delivery item to a location other than the original place of delivery or performance of services (place of performance) and may demand reimbursement of these additional costs from the Customer, unless the transfer corresponded to the intended use of the delivery item or service item.
- 12.7 If the subsequent performance has failed or if the reasonable period to be set for the subsequent performance by the Customer pursuant to clause 12.4 has expired without result or is dispensable according to the statutory provisions, the Customer may demand a reduction in the purchase price or withdraw from the contract and demand compensation for damages and/or expenses. However, the assertion of claims for damages and/or reimbursement of expenses is only possible in accordance with clause 14 of these GTC.
- 12.8 In the event of a contract for work and services, the Customer shall be entitled, in addition to the rights set forth in clause 12.7 above and if the requirements set forth therein are met, to remedy the defect itself and to demand reimbursement of the necessary expenses from the Contractor.
- 12.9 The Contractor's liability for defects shall be excluded if defects are caused by items or materials supplied by the Customer or third parties or are attributable to the services of the Customer's personnel or third parties commissioned by the Customer. The Contractor shall only be liable for defective work carried out by personnel provided by the Customer if such work can be proven to be attributable to defective instructions by the Contractor or to a grossly negligent breach of the Contractor's duty of supervision.
- 12.10 The Contractor shall not be liable for defects in respect of damage to or defects in the delivery item or service item if caused by the following: Unsuitable or improper use by the Customer or third parties, faulty assembly or commissioning by the Customer or third parties, natural wear and tear, faulty or negligent treatment by the Customer or third parties, use of unsuitable operating materials or replacement materials or improper maintenance by the Customer or third parties, rectification or repair work improperly carried out by the Customer or third parties or modifications to the delivery item or service item carried out without the consent of the Contractor.
- 12.11 If the Customer wrongly lodges a complaint about the existence of a defect for which the Contractor is responsible, the Contractor shall be entitled to demand reimbursement from the Customer for the reasonable expenses it has incurred for remedying or checking the defect.
- 12.12 The Customer's right of recourse against the Contractor pursuant to sec. 445a German Civil Code (Seller's right of recourse) shall only exist to the extent that the Customer has not entered into any agreements with its customer that go beyond the statutory claims based on defects.

For defects in title the following shall apply additionally:

- 12.13 Unless otherwise agreed, the Contractor shall only be obliged to render the owed delivery or service in the country of the place of delivery or performance free from rights of third parties.
- 12.14 If a third party asserts justified claims against the Customer due to the infringement of industrial property rights or copyrights (hereinafter referred to collectively as "Industrial Property Rights") by the delivery items delivered by the Contractor, the Contractor shall, at its option, either
- obtain at its own expense a right of use sufficient for the agreed or presumed use of the delivery item and grant it to the customer or
 - modify the delivery item in such a way that the Industrial Property Right is not infringed, or
 - replace the delivery item provided that the agreed or presumed use of the delivery item by the Customer is not impaired thereby.
- 12.15 In the event of an infringement of an Industrial Property Right by a service provided by the Contractor, clause 12.14 shall apply mutatis mutandis with the proviso that clause 12.14c) shall not apply.
- 12.16 If it is not possible for the Contractor to fulfil the obligations pursuant to clause 12.14 or 12.15, or not possible under reasonable conditions, the Customer shall be entitled to the statutory claims and rights. Clause 14 shall apply to claims for damages.
- 12.17 The Contractor's obligations pursuant to clauses 12.14 through 12.16 shall only exist if and to the extent that the Customer without undue delay notifies the Contractor in writing of the assertion of claims arising from Industrial Property Rights by third parties and proceeds in agreement with the Contractor in the handling of such claims and the exercise of its rights.
- 12.18 The Contractor shall not be liable for the infringement of third-party Industrial Property Rights insofar as the infringement is based on drawings, developments or other information or specifications of the Customer for the manufacturing of the delivery item or the provision of the service. In this case the Customer shall indemnify the Contractor against claims of third parties.
- 12.19 The Contractor's liability for the infringement of Industrial Property Rights of third parties shall also be excluded if the infringement was caused by modifications made by the Customer to the delivery item or the performance or the installation of additional equipment or the connection of the delivery item with other devices or appliances.

13 Period of limitation of claims for liability for defects

- 13.1 In deviation from sec. 438 para. 1 no. 3 German Civil Code and sec. 634a para. 1 no. 1 German Civil Code, the limitation period for the Customer's claims for defects in the cases regulated therein shall be one year from delivery or, if acceptance has been agreed or is provided for by law, from acceptance.
- 13.2 If the delivery or service within the meaning of these GTC is a building or an item which has been used for a building in accordance with its common use and which has caused its defectiveness (construction material) or a product the success of which consists in the provision of planning and monitoring services for a building, the statutory limitation period of five years shall apply in each case (sec. 438 para. 1 no. 2, 634a para. 1 no. 2 German Civil Code). Also unaffected are special statutory provisions for the limitation period for claims *in rem* for surrender by third parties (sec. 438 para. 1 no. 1 German Civil Code), in the event of fraudulent intent on the part of the Contractor and for claims in recourse against the supplier in the event of final delivery to a consumer (sec. 479 German Civil Code).
- 13.3 The above provisions on the commencement and duration of the limitation periods pursuant to clauses 13.1 and 13.2 shall apply in the same manner to all contractual and also all non-contractual claims for damages by the Customer based on a defect in the delivery item or service, unless the application of the regular statutory limitation period (sec. 195, 199 German Civil Code) leads to a shorter limitation period in individual cases.
- 13.4 Insofar as the provisions in accordance with the above clauses 13.1 through 13.3 deviate from the statutory limitation periods, this shall not apply to the Purchaser's claims for damages due to a defect for which the Contractor is liable without limitation

in accordance with clause 14.2. In this case, the statutory limitation period shall apply.

14 Liability / damage claims

- 14.1 Claims for compensation of damage and expenses of the Customer, irrespective of the legal basis, in particular due to breach of duties arising from the contractual obligation and tort, shall only exist in accordance with the following provisions of this clause 14.
- 14.2 The Contractor shall be liable without limitation for damages to life, limb and health culpably caused by itself or its legal representatives or vicarious agents and for intentional or grossly negligent breach of duty by itself, its legal representatives or its vicarious agents according to statutory provisions. The Contractor shall also be liable without limitation in accordance with the statutory provisions in the event of malicious intent, also by his legal representatives and/or vicarious agents and to the extent that the Contractor has assumed a guarantee for the quality of the delivery item or service. The Contractor shall also be liable without limitation for claims against the Contractor under the German Product Liability Act.
- 14.3 In the absence of a case as referred to in clause 14.2 above, the Contractor's liability for all damages and expenses incurred by the Customer in the event of simple negligence shall be excluded, unless the Contractor has culpably breached a material contractual obligation (cardinal obligation). Material contractual obligations (cardinal obligations) are those obligations the fulfilment of which makes the proper execution of the contract possible in the first place and the fulfilment of which the Purchaser has relied on and was entitled to rely on.
- 14.4 Insofar as the Contractor is liable in accordance with the foregoing clause 14.3 because of a simple negligent breach of essential contractual obligations, liability shall be limited to the amount of the foreseeable damage typical for this type of contract.
- 14.5 Insofar as the liability of the Contractor is excluded or limited pursuant to this clause 14, this shall also apply to the personal liability of its employees, workers, staff, representatives and vicarious agents.
- 14.6 The limitation period for claims for damage and/or reimbursement of expenses by the customer caused by a defect in the delivery item or service shall be governed by the provisions of clauses 13.3 and 13.4. Otherwise, the statutory limitation period shall apply to claims for damage and/or reimbursement of expenses by the customer pursuant to this clause 14.
- 14.7 A change in the statutory burden of proof is not associated with the above provisions in this clause 14.

15 Use of software

To the extent software is contained in the delivery items and/or service, the Customer shall have the non-exclusive right to use the software to the extent that such use is necessary for the contractually presumed and intended use of the respective delivery item and/or service. Within the limits of this right of use, the Customer shall also be entitled to grant third parties a corresponding right of use to the software. The Purchaser is not permitted to use the software in any other way or exceeding such use.

16 Confidentiality

- 16.1 The Customer shall be obliged to treat as confidential towards third parties, not to make accessible to third parties and to protect against access by third parties all Materials within the meaning of clause 2.5 as well as all business or company secrets, in particular technical know-how and economic operating data, of the Contractor, which are made available to the Customer, made accessible or otherwise made known to the Contractor in connection with a contract (hereinafter collectively referred to as "Confidential Information"), unless the Customer is authorized pursuant to clause 2.5 to disclose Confidential Information to third parties or the Contractor has given its prior written consent to the disclosure of Confidential Information to a third party.
- 16.2 The confidentiality obligation pursuant to clause 16.1 shall not apply or shall cease to apply to Confidential Information which is publicly known or becomes known without breach of the confidentiality obligation, which was already known to the Customer prior to its disclosure by the Contractor or which the

Customer otherwise lawfully obtained. The confidentiality obligation shall also not apply if it conflicts with the assertion of legal claims by the Customer.

- 16.3 This confidentiality obligation shall remain in force even after termination of a contract and shall also be imposed on third parties in the event of permissible disclosure of Confidential Information to third parties.

17 Dispute resolution / applicable law

- 17.1 All disputes arising out of or in connection with all contracts between us and the Supplier to which these GTC form an integral part or their validity shall be finally settled in accordance with the Arbitration Rules of the German Arbitration Institute e.V. (DIS) without recourse to the ordinary courts of law. The arbitral tribunal shall be comprised of three members. The seat of the arbitration is Lübeck, Germany.

- 17.2 These GTC and all contracts between the Contractor and the Customer to which these GTC form an integral part shall be governed exclusively by German law with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (UNCITRAL/CISG).

18 Severability

Should individual provisions of these GTC or of a contract for goods and services, of which these GTC form an integral part, be or become invalid, the validity of the remaining provisions of these GTC or of the contract shall not be affected thereby.

