

General Terms and Conditions of Sale and Delivery for Products and Services of Niles-Simmons Industrieanlagen GmbH

1. General

- 1.1 Any delivery of goods and provision of services including the related documents according to Art. 34 of the United Nations Convention of 11. April 1980 on Contracts for the International Sale of Goods (CISG) (together hereinafter "Products") by Niles-Simmons Industrieanlagen GmbH ("Supplier") to customers ("Customer") shall be subject to the Terms and Conditions of Sale and Delivery set forth herein ("GTC") to the extent no other agreements have been explicitly made. As far as the Customer's general terms and conditions are inconsistent with these GTC, their application shall be subject to the explicit written approval of the Supplier.
- 1.2 These GTC shall (i) also govern all future contracts on deliveries of goods and provision of services between Supplier and Customer and (ii) shall also apply if the Supplier performs deliveries despite the Supplier's knowledge of differing or contrary terms and conditions of the Customer.
- 1.3 These GTC shall only apply vis á vis entrepreneurs, governmental entities, or special governmental estates.

2. Formation of the Contract

- 2.1 The Supplier's proposals for concluding a contract addressed to the Customer are non-binding, unless expressly stated otherwise. This also applies with regard to technical specifications (e.g. drawings, calculations, references to DIN standards etc.) or other product information of the Supplier included in a proposal. Any such non-binding information shall not be qualified as sample or model according to Art. 35 para. 2 lit. c CISG. The Supplier reserves the right of property and copyright to any such information.
- 2.2 Unless expressly stated otherwise the Customer's order constitutes a binding offer which the Supplier is entitled to accept within two (2) weeks after the offer has been received by the Supplier. The revocation or withdrawal of the offer by the Customer in accordance with Art. 15 para. 2 and Art. 16 para. 1 CISG is excluded.
- 2.3 The Supplier's acceptance of the Customer's offer shall be made in writing, per email or telefax ("Textform"). For the content of the contract the Supplier's acceptance in Textform shall be decisive unless it contains additional or different terms which do materially alter the terms of the Customer's offer.

3. Export Control Clause

- 3.1. Irrespective of the agreed delivery terms and of whether the Products shall be cleared for export by Supplier or by Customer, the Supplier is only obliged to deliver the Products after all legally necessary export examinations or approval procedures are completed and upon receipt/presentation of any necessary governmental approval (e.g. export licence).
- 3.2. The Customer undertakes to provide all information and documentation which is required for the respective export. The Supplier will use his best efforts to obtain the required export permission but the Supplier does not guarantee that the export permission will be granted.
- 3.3. Delays due to export examinations or approval procedures render deadlines and delivery dates inapplicable. The Supplier is not liable for any damage or loss of costs suffered by the Customer in connection with delays or impossibility of delivery due to missing export approvals unless the Supplier is responsible for such delay or impossibility.
- 3.4. The Customer is aware and acknowledges that the sale, resale and the disposal of the Products including any associated technology or documentation may be governed by German, EU, US or other national or international export control regulations. Any passing on of Products in particular but not limited to (i) embargoed countries, (ii) denied persons or (iii) persons that use or may use the Products for military purposes, ABC weapons or nuclear technology may be subject to special permits and official licenses. The Customer declares with his order of the Products that he complies with any applicable export statutes and regulations regarding the Products and that he will in particular not directly or indirectly deliver the Products into countries that prohibit or restrict such import.

4. Prices

- 4.1. Unless expressly agreed otherwise prices are stated in EURO and exclusive any value added tax (VAT), which is to be paid additionally by the Customer in the amount specified by applicable law.
- 4.2. Unless otherwise expressly agreed, the prices are quoted ex works (EXW Incoterms® 2010) **Chemnitz**. Therefore the Customer shall bear all additional costs, in particular packing costs in excess of standard packing, freight costs, insurance costs and in case of deliveries of Products to and/or in other countries, all costs for export and import as well as contingent customs duties, taxes, public fees (in particular import sales tax and withholding taxes) etc.

5. Delivery Terms and Periods, Passing of Risk

- 5.1. Unless expressly agreed otherwise, the Supplier shall deliver the Products ex works (EXW Incoterms® 2010) **Chemnitz**. That means in particular, that
- the risk of accidental deterioration, loss and destruction of the Products passes to the Customer upon Supplier's notification to the Customer that the packed and labelled Products are placed at the Customer's disposal for pick up at the Supplier's premises;
 - if formal preliminary acceptance is agreed, the risk of accidental deterioration, loss and destruction of the Products passes to the Customer upon Supplier's notification to the Customer that the preliminary accepted Products are packed and labelled and placed at the Customer's disposal for pick up at the Supplier's premises;
 - the Customer bears any costs resulting from or in connection with delayed pick up or delivery of the Products;
 - the Customer is responsible for any documents and permissions relating to export and import of the Products.
- 5.2. Irrespective of the agreed delivery terms and of whether the Products shall be cleared for export by Supplier or by Customer, the Supplier is only obliged to deliver the Products after all legally necessary export examinations or approval procedures are completed and upon receipt/presentation of any necessary governmental approval (e.g. export licence).
- 5.3. Delivery periods shall only be binding if expressly agreed in Textform. Any delivery periods shall only begin on the date of the formation of the contract and the settlement of all details relating to an order including the furnishing of any required official certificates. If the parties expressly agree to other delivery terms than EXW Incoterms® 2010, then the delivery periods shall be deemed to be met on timely notification of readiness to ship if the Products cannot be dispatched in time through no fault of the Supplier.
- 5.4. At the earliest two (2) weeks after expiry of a non-binding delivery period or date the Customer may set the Supplier an appropriate grace period of at least four (4) weeks for delivery. The Supplier may only be deemed to be in default after expiry of such a grace period.
- 5.5. Without prejudicing the Supplier's rights in case of Customer's default, delivery periods and dates shall be deemed to be extended by the period of time during which the Customer fails to comply with his obligations to the Supplier.
- 5.6. The Supplier is entitled to execute partial delivery at any time to the extent its acceptance is not unreasonable for the Customer, especially if the partial delivery can be used by the Customer, the delivery of the outstanding Products is secured and no

significant additional costs arise thereby for the Customer; this shall be deemed as partial fulfillment.

- 5.7. The Customer may only declare the contract avoided after the fruitless expiring of two grace periods unless the hindrance is merely temporary in nature and a delay would not unreasonably affect the Customer.
- 5.8. In case the Supplier does not comply with his obligations, the Supplier shall only be liable for all types of damages in accordance with Clause 10 of these GTC.

6. Examination of the Products, Formal Preliminary Acceptance, Formal Final-Acceptance

- 6.1. The Customer shall examine the Products according to Art. 38, 39 CISG. Complaints shall be made in Textform and have to be received by the Supplier within fifteen (15) working days from the arrival of the Products at their destination. The same shall apply if the Customer detects a defect at a later point of time (hidden defect). The notification shall describe the defects which have appeared as precisely as possible. Such notification shall also be issued in case of a wrong or short delivery. In case that the Customer fails to issue such notification the Products delivered shall be considered to be approved by the Customer unless the Supplier knew the defect or could not have been unaware of.
- 6.2. The parties may agree that a formal acceptance of the Products by the Customer is required and specify the details in this regard. If not expressly agreed otherwise the formal acceptance consists of (i) a preliminary acceptance of the Products in written form at the facilities of the Supplier when the Products are ready for shipment just before packing and (ii) a final acceptance of the Products in written form at the facilities of the Customer, as soon as completion or mounting of the Products is notified, or in case stipulated testing was undertaken.
- 6.3. Neither preliminary acceptance nor final acceptance may be refused due to minor defects.
- 6.4. The Supplier shall notify the Customer when the Products are ready for the preliminary acceptance at the Supplier's premises. The parties shall perform the preliminary acceptance within 15 (fifteen) working days after receipt of such notification. The Customer is obliged to declare the preliminary acceptance and to sign the respective minutes unless the Products are found to be materially defective.
- 6.5. The Products are deemed to be preliminarily accepted by the Customer if the preliminary acceptance is not performed
 - within 15 (fifteen) working days after receipt of the respective notification
 - due to reasons beyond the Supplier's control and

- the Supplier has performed all agreed testing for the Products and the Products passed without material defects and
- the Supplier informed the Customer in the respective notification of the legal effect of the Customer's failing to attend the performance of the preliminary acceptance according to this Clause 6.5 (i.e. deemed preliminary acceptance, *fingierte Vorabnahme*).

In this case the minutes of the performance of the preliminary acceptance are valid with the sole signature of the Supplier (without the signature of the Customer) and therefore binding for the Customer and third parties (e.g. security or payment providing banks or credit institutions).

- 6.6. The Supplier shall further notify the Customer upon completion of the agreed mounting and installation at the agreed destination of the Products in order to perform the final acceptance. The parties shall perform the final acceptance within 10 (ten) working days after receipt of such notification. The Customer is obliged to declare the final acceptance and to sign the respective minutes unless the Products are found to be materially defective.
- 6.7. The Products shall be deemed to have been finally accepted if the final acceptance is not performed
- within 10 (ten) working days after receipt of the notification of completion according to Clause 6.6 or within 5 (five) working days after receipt of the respective notification if the Customer already started using the Products
 - due to reasons beyond the Supplier's control and
 - the Supplier informed the Customer in the respective notification of completion of the legal effect of the Customer's missing of the final acceptance according to this Clause 6.7 (i.e. deemed acceptance, *fingierte Abnahme*) and
 - the Customer has not notified the Supplier of material defects within the respective periods.

In this case the minutes of the performance of the final acceptance are valid with the sole signature of the Supplier (without the signature of the Customer) and therefore binding for the Customer and third parties (e.g. security or payment providing banks or credit institutions).

7. Payment, Securities, Interest

- 7.1. Unless expressly agreed otherwise, the agreed price shall be due and payable as follows:
- 50 % within fourteen (14) days after formation of the contract ("Initial Installment") and

- 50 % upon delivery (“Delivery Installment”), i.e. EXW Incoterms® 2010 upon Supplier’s notification to the Customer that the packed and labelled Products are placed at the Customer’s disposal for pick up at the Supplier’s premises.
- 7.2. If the parties expressly agree to other delivery terms than EXW Incoterms® 2010 the Supplier is entitled to request the provision of an irrevocable and transferable letter of credit (*Dokumentenakkreditiv*) of a major bank, a public savings bank or a credit insurer from the Customer to secure his payment obligations for the Delivery Installment. The payment of the secured amount granted in the letter of credit for the Delivery Installment may only be conditional upon the presentation of the following documents:
- transport documents,
 - insurance documents,
 - trade invoices.
- 7.3. Where formal acceptance is agreed, the agreed price shall be payable as follows:
- 50 % within fourteen (14) days after formation of the contract (“Initial Installment”)
 - 40 % upon preliminary acceptance (“Pre-Acceptance Installment”) and
 - 10 % upon final acceptance (“Final Installment”).
- 7.4. Upon the Supplier’s request the Customer is obliged to secure his payment obligations for the Pre-Acceptance Installment and the Final Installment by providing the Supplier with an irrevocable and transferable letter of credit (*Dokumentenakkreditiv*) of a major bank, a public savings bank or a credit insurer. The payment of the secured amount granted in the letter of credit for the Pre-Acceptance Installment and the Final Installment may only be conditional upon the presentation of the following documents:
- transport documents,
 - insurance documents,
 - trade invoices,
 - minutes concerning the performed (or deemed) pre-acceptance according to Clauses 6.4 and 6.5, respectively
 - minutes concerning the performed (or deemed) final acceptance according to Clause 6.6 and 6.7.
- 7.5. All costs of letters of credit are at the expense of the Customer. The Supplier reserves the right to reject a letter of credit in case of unclear, unusual or unrealizable terms or conditions.
- 7.6. Payment shall be considered to have been made on the day received by the Supplier.

- 7.7. Upon the due date and without reminder of payment the Supplier is entitled to demand interest of nine (9) percentage points above the basic rate of interest of the European Central Bank p.a. for the outstanding amount. The Supplier reserves the right to claim a higher actual damage.
- 7.8. The Customer shall have no right to set off unless the underlying counterclaims have been conclusively determined by a court or expressly acknowledged by the Supplier. The Customer shall only have the right of retention if the underlying counterclaims arise from the same contractual relationship.
- 7.9. If, after the formation of the contract, a substantial deterioration of the Customer's creditworthiness becomes apparent, in particular when the Customer is in default of payment or provision of the letter of credit, the Supplier is entitled to render his contractual duties only against advance payment or to require the provision of additional collateral security. Art. 71 CISG applies.

8. Warranty

- 8.1. The Supplier warrants that at the time of delivery the Products comply with the specifications agreed upon by the parties in the contract. Descriptions of the Products such as pictures, drawings, information concerning weight, measure, capacity, variations etc. contained in offers or brochures etc. are for information purposes only and not to be considered as binding specifications unless expressly agreed in the contract.
- 8.2. Any warranty claims of the Customer are subject to the due fulfillment of his obligation to examine the Products according to Clause 6.1 respectively to take part in the formal acceptance proceedings according to Clause 6.2 to 6.7 if applicable. The Customer shall be obliged to notify defects to the Supplier in Textform. Art. 44 CISG is expressly excluded.
- 8.3. The Customer shall be entitled to request delivery of substitute products, reduce the purchase price or declare the contract avoided, because of a lack of conformity of the Products only after the Customer has requested the Supplier at least twice to rectify the defect within a reasonable period of time and the Supplier has failed to rectify the defect within such period or has refused to do so. However, only material defects of the Products limiting their contractual agreed use substantially or completely shall qualify as a fundamental breach, which may entitle the Customer to declare the contract avoided.
- 8.4. Any warranty shall be void if operating or maintenance instructions are not observed, the Products are altered, parts of the Products are replaced or materials are used that are not in accordance with the original Product specifications by the Supplier, unless the Customer proves that the defect in question had another cause. This shall also apply where the Products are used in combination with third-party deliveries or services in a way that is incompatible with the Product specifications or operating

instructions of the Supplier or where the defect of the Products is based on design records or other standards and specifications provided by the Customer.

- 8.5. If the parties agree on the delivery of used Products any warranty claims for the Products are expressly excluded.
- 8.6. Any rights of the Customer to claim damages or compensation shall be governed by the provisions in Clause 10 of these GTC.
- 8.7. The limitation period for warranty claims shall be twelve (12) months from the date of delivery of the Products respectively the date of final acceptance or deemed final acceptance of the Products if formal acceptance is agreed. This shall not apply to Customer's claims due to willful or gross negligent breach of the Supplier's duties, claims for damages resulting from loss of life, physical injury or damage to health and claims according to the Product Liability Act (*Produkthaftungsgesetz*).

9. Industrial Property or other Intellectual Property Rights, other Third Party Rights or Claims

- 9.1. The Supplier warrants that the Products delivered to the Customer are free from any right or claim of third parties including industrial property or other intellectual property rights of third parties. Art. 41 and 42 CISG apply with the restriction that the warranty of the Supplier only refers to the contractually agreed use and destination of the Products. However, the Customer may only claim such warranty if he notifies the Supplier of the third party claim or right specifying its nature in detail within 15 (fifteen) working days after the Customer has become aware or ought to have become aware of the respective claim or right. Art. 44 CISG is expressly excluded.
- 9.2. In the event of claims against the Customer due to a breach of industrial property or other intellectual property rights in using the Products according to the contractually agreed use, the Supplier will use his best efforts to obtain the right for the Customer to continue using the Products. If it is impossible to continue using the Products under reasonable economic conditions, the Supplier may, at his own discretion, modify or replace the Products or the legally defective parts thereof in order to remedy the legal deficiency.
- 9.3. Only after the Customer has requested the Supplier at least twice to remedy the legal defect within a reasonable period of time and the Supplier has failed to remedy the defect within such period according to Clause 9.2 or has refused to do so, the Customer shall be entitled to declare the contract avoided or reduce the purchase price due to a lack of legal conformity of the Products.
- 9.4. The Supplier shall have no obligations in case breaches of rights are caused by exploiting the Products in any other manner than contractually agreed.
- 9.5. Any rights of the Customer to claim damages or compensation shall be governed by the provisions in Clause 10 of these GTC.

- 9.6. The limitation period for warranty claims under Clause 9 shall be twelve (12) months from the date of delivery of the Products respectively the date of final acceptance or deemed final acceptance of the Products if formal acceptance is agreed. This shall not apply to Customer's claims due to willful or gross negligent breach of the Supplier's duties, claims for damages resulting from loss of life, physical injury or damage to health and claims according to the Product Liability Act (*Produkthaftungsgesetz*).

10. Limited Liability

- 10.1. In case of a breach of contractual obligations, defective deliveries including violation of industrial or other intellectual property rights or other third parties rights or tortuous acts, the Supplier shall only be obliged to compensate damages or expenses if the Supplier has acted intentionally or with gross negligence or in cases of slight negligence, if such negligence results in the breach of an essential contractual duty (a duty the breach of which puts the fulfilment of the purpose of the contract at risk). However, in case of slight negligence, the Supplier's liability shall be limited to typical foreseeable damages at the time of the conclusion of the contract.
- 10.2. The liability of the Supplier for damages or losses caused by late delivery due to slight negligence shall be limited to five (5) per cent of the agreed purchase price.
- 10.3. The limitation period for claims against the Supplier, based on whatever legal ground, shall be twelve (12) months from the date of delivery to the Customer respectively the date of final acceptance or deemed final acceptance of the Products if formal acceptance is agreed and in case of tortious claims, twelve (12) months from the date the Customer becomes aware or could have become aware of the grounds giving rise to a claim and the liable person, had the Customer not been grossly negligent.
- 10.4. Insofar as the Supplier's liability for damages is excluded this also applies to the personal liability for damages of the Supplier's representatives and of persons engaged by the Supplier in performance of his obligations.
- 10.5. The exclusions and limitations of liability in this Clause 10 shall not apply to Supplier's liability for guaranteed characteristics (*garantierte Beschaffenheitsmerkmale*), loss of life, physical injury or damage to health or according to the Product Liability Act (*Produkthaftungsgesetz*) or resulting from intentional or gross negligent behavior.

11. Force Majeure

- 11.1. The Supplier's obligations of delivery are subject to correct and timely delivery from his own suppliers, unless the delayed or incorrect supply by his own suppliers is caused by the fault of the Supplier (e.g. delayed order). Even if binding delivery times or dates were agreed, the Supplier does not accept responsibility for delays in delivery caused by force majeure or similar unforeseeable and unavoidable

circumstances, such as war, unrest, problems in procuring material, breakdown of machinery or equipment, energy supply difficulties, strike, lockout, shortage of personnel, lack of means of transport, terrorism, fire, flood, actions by authorities (in particular government or supranational export control provisions, delivery embargoes or other sanctions) etc. (regardless whether such circumstances affect the Supplier himself or his suppliers or their sub-contractors) ("Force Majeure"). Such circumstances entitle the Supplier to postpone the delivery by the period of their duration plus a reasonable starting up time. On the occurrence of any event of Force Majeure, the Supplier shall give reasonable notice of such event to the Customer without undue delay. In case the obstacle lasts longer than 3 months both parties are entitled to cancel the elements of the contract not fulfilled yet.

- 11.2. Where the Customer cannot be reasonably expected to accept such delay, he shall have a right to declare the contract avoided. Such declaration must be made without undue delay as soon as the Customer is informed about the Force Majeure event. Further claims of the Customer due to Force Majeure circumstances are expressly excluded.

12. Retention of Title

- 12.1. The Products shall be delivered under prolonged and extended retention of title with the result that they remain the property of the Supplier until all present and future claims against the Customer are settled ("Reserved Products"). If the Customer is in breach of contract, in particular if he is in delay of payment, the Supplier shall be entitled to ask for the return of the Reserved Products. The taking back of the Reserved Products shall represent a withdrawal from the contract.
- 12.2. The Customer may process the Reserved Products within the scope of regular business operations. This authorization shall cease upon default of payment, suspension of payments by the Customer or when a request for the opening of insolvency proceedings is filed against the Customer. Processing or transformation shall always be for the account and in the status of the Supplier as manufacturer, without simultaneously obligating the Supplier. If the Supplier's ownership of the Reserved Products ceases through transformation or processing, it is agreed herewith that the Customer's ownership right on the new product is proportionately (invoice value) assigned to the Supplier. The Customer shall act as custodian of the joint property (*Bruchteilseigentum*) free of charge. Jointly owned products are also considered to be subject to retention of title.
- 12.3. The Customer is entitled to sell the Reserved Products, provided, however, that the Customer is not in default with payment, has not suspended payments or is subject of a request for the opening of insolvency proceedings. Pledging and assignment of the Reserved Products by bill of sale as security for debts of the Customer are not permitted.

- 12.4. For the purpose of securing the Supplier's claims the Customer herewith already assigns to the Supplier all claims (if applicable only in the amount representing the respective proportionate ownership) arising from the re-sale of the Reserved Products or from any other legal ground (insurance, willful act, etc.) including all balance claims out of current accounts. The Supplier herewith authorizes the Customer to collect the claims assigned to the Supplier in his own name for the Supplier's account. This authorization for collection can be revoked if the Customer fails to properly meet his liabilities towards the Supplier. In the event that a third party is claiming, the Customer will indicate the Supplier's title and inform the Supplier without delay. In the event of breach of contract by the Customer, in particular default of payment, the Supplier is entitled to take back the Reserved Products or, if necessary, to demand assignment of the Customer's claims against third parties for return of the Reserved Products.
- 12.5. Until all claims of the Supplier against the Customer are paid the Customer is obliged to insure the Reserved Products towards all storage risks at his own expense and to provide proof of this at the Supplier's request.
- 12.6. The Supplier's rights arising from retention of title shall remain in force until the Supplier has been completely discharged of all contingent liabilities established in connection with the payment of the purchase price (e. g. payment by cheque and bill of exchange), which the Supplier accepted in the interest of the Customer.
- 12.7. If the total value of securities which the Supplier is entitled to exceeds the Supplier's total claims against the Customer by more than 50 %, the Supplier is obliged to release securities or return them at his option.
- 12.8. If the retention of title in the foregoing form is not (fully) effective under the laws of the country governing the legal conditions for the transfer of ownership of the Reserved Products, the Customer shall cooperate in establishing similar and equivalent security rights in favour of the Supplier complying with the provisions of this country (e.g. letter of credit).

13. Subcontractors

The Supplier shall be entitled at any time to retain sub-contractors to execute the order (in full or in part) as well as to assign the complete contract as such or individual rights and obligations of the contract to another company affiliated with the Supplier without the Customer's previous consent.

14. Confidentiality, Data Protection

- 14.1. The Supplier has the sole ownership and copyrights to his offers, images, drawings, calculations and other records (including in electronic form). Without explicit approval of the Supplier in writing, such items must not be made accessible or known to third parties nor reproduced by the Customer himself or by third parties.

- 14.2. Unless otherwise expressly stipulated in Textform, no information provided to the Supplier in connection with orders shall be regarded as confidential, unless their confidential nature is obvious.
- 14.3. The Supplier is entitled to store personal data in relation to the contractual relationship and to transfer such data to companies affiliated with the Supplier and subcontractors, except to the extent that this is incompatible with data protection regulations applicable to the Supplier.
- 14.4. The Supplier stores the Customer's data specified under Clause 14.3 when the Customer first contacts the Supplier e.g. for an order request. The Customer declares his consent to the storage of the respective data. This applies in particular, when a contract is concluded. Furthermore, the Customer declares his agreement that, if he violates the contract, the Supplier is allowed to forward this data to companies and persons whom the Supplier entrust with enforcing his own claims and rights.
- 14.5. The Customer has the option of revoking his consent to the aforementioned storage, use and processing of his personal data at any time. He can demand in Textform at any time that his personal data is deleted or blocked for use and processing in case statutory legal retention periods apply. The Customer has the right to demand information at any time about stored personal data concerning him, the origin and recipient of the personal data, the use of the personal data and the purpose in this regard.

15. Software Rights

- 15.1. The following provisions of this Clause 15 shall apply where the Products include or are exclusively confined to the delivery or permanent transfer for use of software unless a separate licensing agreement has been concluded.
- 15.2. The Customer is granted a non-exclusive right unlimited in terms of time and place to the use of the software. Where, according to the contract, the software is not used by the Customer himself but is rather passed on completely or partially by the Customer to a third party (final customer), the rights specified in this Clause 15 are only owed to such final customer.
- 15.3. The use of the software must be confined to the scope defined in the pertinent contract. In case of a licence confined to a specific device, the software may be installed and used only on a single device. In case of a server licence, the software may be installed and used only on a single server. Use shall be limited to the number of natural persons that corresponds to the number of licenses acquired. Any use beyond the contractually agreed measure is not in conformity with the contract.
- 15.4. Permissible use comprises the installation of the software on a device or server, loading thereof onto a working memory, in each case to the extent required and feasible, and use thereof by the Customer for the intended purpose. The Customer is in no event entitled to let or otherwise sub-license the acquired software, to publicly

- communicate it or make it accessible wireless or wire-bound or to make it available to third parties against payment or free of charge. Clause 15.6 of these GTC shall remain unaffected.
- 15.5. No software, documentation or subsequent upgrade thereof may be disclosed to any third party, without the prior written consent by the Supplier, nor may they be altered, copied or otherwise duplicated, even for the Customer's internal needs – apart from a single back-up copy for safety purposes. On a copy produced the Customer will clearly display the words “backup copy” along with the Supplier's copyright notice.
- 15.6. If the parties expressly agreed that the Customer is entitled to transfer the acquired software to a third party, then the Customer is only entitled to transfer the software for permanent – not, however, for temporary – use. The Customer shall then
- completely cease using the software,
 - remove and erase all copies installed with the Customer and
 - erase all copies installed on other data carriers with the Customer (complete with backup copies) unless he is obliged by law to preserve them for a longer period.
- 15.7. The Customer is required to confirm to the Supplier in Textform at his request that he has carried out the measures listed in Clause 15.6 or to state the reasons for preserving the software for a longer period. Where software is transferred to a final customer for his permanent use, the Customer is obliged to communicate to the Supplier the name and the full address of the final customer. The customer shall ensure that the final customer confirms to the Supplier in writing that he has received the software from the Customer.
- 15.8. Where software supplied by the Supplier is installed on hardware and expressly labelled as OEM software, the software may be transferred for use to a third party only jointly with such hardware. Data carriers supplied by the Supplier with OEM software copies are merely backup or recovery data carriers which are not independently transferable. In all other respects Clause 15.6 shall apply.
- 15.9. The Customer undertakes to prevent his staff members and other third parties by taking suitable precautions from having unauthorized access to the software supplied and to the pertinent documentation, doing so in particular by storing the original data carriers and the backup copies in a secure place. Copyright notices, serial numbers and other programme identifying marks must not be removed from the data carrier or from the documentation and must not be modified.
- 15.10. The deliveries may include third-party software which the Supplier undertakes to identify as such. The scope of rights of use to such software is primarily defined in the pertinent licensing conditions provided by the third-party producer. The above terms shall apply by way of supplement. The Customer is required to accept the licensing conditions of the third-party producer. Failing such acceptance entitles the Supplier to declare the contract avoided.

15.11. Typically, no source codes are provided. This shall require a special written agreement in each particular case.

16. Disposal

16.1. The Customer is obliged to strictly observe the documents accompanying the Products and to ensure the correct disposal of the Products in accordance with the applicable law.

16.2. The Customer shall be obliged to dispose of the Products at his own costs. The Customer shall be obliged to transfer this obligation on the purchaser of the Products or parts thereof in case of a resale of the Products.

17. Anti-corruption, Compliance

17.1. Within the complete business relationship with the Supplier the Customer undertakes to comply with all statutory provisions. In particular in the areas of anti-corruption, competition and restrictive practices law. In particular, the Customer represents that he will

- refrain from offering, promising or granting staff members of the Supplier and persons close to them any unlawful benefits. The same obligations apply to those staff members of the Customer, his vicarious agents and other third parties who are acting on the Customer's instructions and whom the Customer is required to commit accordingly;
- comply with the applicable competition law rules and in particular refrain from any agreements or concerted practices which have as their object or effect the prevention, restriction or distortion of competition;
- comply with the statutory provisions according to applicable minimum wages law as well as other labour law provisions in particular with regard to the treatment of employees, work safety, the elimination of child labour and forced labour etc.;
- comply with the statutory provisions according to applicable environmental regulations.

17.2. On the suspicion of a violation of the obligations according to Clause 17.1 the Customer shall clear up possible violations without undue delay and inform the Supplier of the measures taken. In case the suspicion is justified the Customer has also to inform the Supplier within a reasonable period of time of the measures taken to prevent such violation in the future. If the Customer does not comply with the foregoing obligation the Supplier reserves the right to avoid existing contracts with immediate effect.

17.3. In case of serious legal offences, in particular against the provisions listed under Clause 17.1, the Supplier reserves the right to avoid existing contracts with immediate

effect without notice and to claim damages due to the violation of these statutory provisions.

18. Miscellaneous

- 18.1. Place of performance shall be the place of business of the Supplier.
- 18.2. The place of jurisdiction shall be the place of business of the Supplier. However, the Supplier may also take legal action against the Customer at Customer's place of business.
- 18.3. The legal relationship between the Supplier and the Customer shall be governed by German law including the United Nations Convention of 11. April 1980 on Contracts for the International Sale of Goods (CISG) in the English version. Where standard terms of delivery are used, in case of doubt the Incoterms® 2010 of the International Chamber of Commerce apply taking into account the provisions stipulated in these GTC.
- 18.4. Should any of the clauses of these GTC be wholly or partially invalid or void, the validity of the remaining clauses or parts thereof shall not be affected.

GTC as of July 2017