



I. General provisions

1. For any and all contractual relations by and between, on the one hand, the FLEXIM GmbH and his subsidiaries and other affiliates (such subsidiaries and other affiliates hereinafter referred to as „Affiliates“, and the FLEXIM GmbH and his Affiliates beforehand jointly referred to as „FLEXIM GmbH-Group“, and each of them individually hereinafter referred to as „Supplier“) and, on the other hand, the contractual partner and other customers (these contractual partners and other customers hereinafter individually referred to as „Customer“) solely these General Terms and Conditions for the supply and assembly of products (hereinafter referred to as „General Conditions“) and, if any, specifically concluded contractual agreements shall apply. Unless otherwise explicitly agreed upon in writing, any and all general terms and conditions of the Customer deviating from the General Conditions shall not be applicable. The General Conditions shall also apply solely where the Supplier despite his knowledge of any general terms and conditions of the Customer performs deliveries or services to the Customer without reservation. The General Conditions, however, shall not apply if and insofar mandatory law provides deviating provisions.
2. The General Conditions shall also govern likewise all contractual relations between the Supplier and the Customer which applies even in case that their application is not specifically agreed upon thereto.
3. Any and all offers by the Supplier shall be non-binding and subject to confirmation by the Supplier unless explicitly determined by the Supplier as binding.
4. The conclusion of a contract is subject to a prior offer by the Supplier followed either by the acceptance of such offer by the Customer and thereupon an order confirmation made by the Supplier or a jointly between the parties agreed single contract document, such order confirmation and contract document issued by at least electronical means (“Textform” as per Sec. 126 b German Civil Code (“Bürgerliches Gesetzbuch” hereinafter referred to as “BGB”). In case that the Supplier has not made a prior offer but the Customer has made an offer constituting an offer for conclusion of a contract (§ 145 German Civil Code (“BGB”)) the Supplier shall be entitled to accept such offer by the Customer by, within a two weeks period, either the transmittal of an order confirmation or the execution of the delivery or services.
5. Any estimate of costs submitted by the Supplier shall be non-binding unless otherwise agreed upon.
6. The Supplier reserves any and all rights to all of his depictions, plans, drawings, sketches, calculations and other technical documentation as well as cost estimates (hereinafter jointly referred to “Supplier’s Documentation”) until the conclusion of a contract, and beyond this without any time limitations in general any and all intellectual property rights embodied in this Supplier’s Documentation. Unless otherwise agreed upon the provisions of Sec. XIV.1 shall apply correspondingly to the Supplier’s Documentation; thus, in particular, the Customer shall be obliged to keep the Supplier’s Documentation confidential towards third parties and solely to make use of them for the execution of the contract with the Supplier. In case that no contract is concluded between the parties the Customer upon request by the Supplier shall be obliged to return the Supplier’s Documentation to the Supplier.

II. Content and scope of delivery and service obligations / reservation as to installations works

1. The scope of the delivery and service obligations of the Supplier shall be determined by either the order confirmation issued, or the contract document agreed upon, as per Sec. I.4.
2. In case of any modifications of the products of the Supplier due to and in the course of the steadily technical advances after conclusion of the contract the Supplier, unless otherwise agreed upon in writing, shall be entitled to deliver also such technically modified product versions provided however that such modification is reasonable to the Customer taking by this the interests of both sides into account; in this respect, the Supplier shall be entitled to deviate in particular from illustrations, plans, drawings, sketches, descriptions and specifications for colour, measure, weight and quality and other specification elements.
3. Any and all permissions for the performance and operation of the deliveries and services shall be arranged by the Customer at its risk and expenses. In case of any assistance rendered by the Supplier, the Customer shall reimburse the Supplier for any costs incurred by the Supplier for such assistance.
4. The Customer shall be obliged to examine at its responsibility the materials offered by the Supplier as basis or ingredient for the product of the Supplier prior to the conclusion of the contract whether or not these materials are suitable comprising in particular but not limited to their suitability as to their chemical resistance. Such materials shall be deemed approved by the Customer unless he has objected to these materials before the conclusion of the contract.
5. As far as the deliveries and services contain software the Supplier hereby grants to the Customer the non-exclusive right to make use of the delivered software including the relevant documentation for the contractual purpose, limited, however, on the application to the deliveries and services to which the software is assigned; furthermore, the Customer is granted the right to produce a backup copy. Any and all other rights with respect to the software and the documentation shall vest with the Supplier respectively the supplier of the software. Furthermore, the Customer shall not be entitled to make any further use of the software than granted beforehand, in particular, to grant any sublicenses.
6. The Supplier shall be entitled to withdraw from any and all obligation to render installation services if after the conclusion of a contract a threat for life, body or health occurs at the place or in the country destined for the execution of the installation works whereby the occurrence of such threat shall be deemed in particular if the Foreign Offices of Germany or United Kingdom or USA have issued a travel warning with respect to this place or country.

III. Prices

1. Unless otherwise agreed upon in writing, all prices shall be net prices EXW (Incoterms 2010) at the place of business of the Supplier excluding VAT and packaging.
2. In case, and unless otherwise contractually agreed upon, that the Supplier shall render also installation services the Customer shall pay to the Supplier not just the remuneration for the delivery and installation but in addition with respect to the installation works regarding the Supplier's staff thereto all costs for the required travelling, room and board, electronic and other communication and regarding the installation equipment and tools unless provided by Customer, the costs for their import, export, transport and storage. Unless otherwise agreed upon, the Supplier may calculate these additional costs by adding to the – as the case may be already known or anticipated – prices already, or presumably to be, incurred by him, a handling fee of 5 % of the prices.
3. The Supplier reserves the right to adjust the prices appropriately in case of any cost reductions or increases after the conclusion of the contract especially due to changes of labour costs, e.g. due to collective agreements, or changes of material prices. Upon the Customer's request the Supplier will prove the requirement of such changes.
4. Unless covered by warranty obligations of the Supplier, the Supplier shall be entitled to charge a reasonable flat-rate fee for the dispatching and packaging for any return consignment of repaired products or delivery of spare parts in addition to the price for the delivery as such.

IV. Time of delivery and services / delays

1. Lead times for deliveries and services shall be non-binding unless expressly agreed upon in writing as binding.
2. Such binding lead times for deliveries and services must only be observed by the Supplier if any and all documentation, necessary permits and releases, especially with respect to plans, owed by the Customer are received by the Supplier in time and if also the agreed terms of payment and all other obligations of the Customer are fulfilled in time. Unless the conditions are fulfilled, any such lead times for deliveries and services set shall be prolonged appropriately.
3. In case of deliveries without installation works, the set lead times shall be deemed as have been complied with if the products are dispatched or collected in the agreed lead time. In case of a delayed dispatch or collecting caused by the Customer, the set lead time shall be deemed to be complied with if readiness for the dispatch or the collection has been announced within the agreed lead time.
4. If the non-compliance of the set lead time is due to force majeure such as mobilisation, war or rebellion, or similar events, e.g. strike or lock-out, the lead time shall be prolonged appropriately.
5. In case of any delay of the Supplier with a delivery or service due to at least negligence of the Supplier, the Customer shall at the request of the Supplier declare within an appropriate period of time whether or not the Customer continues to demand the performance of the delivery or service, or wishes to cancel the respective contract.
6. In case of a delay or an impossibility of the delivery or service due to, and caused by fault of, the Supplier for whatsoever reason, any and all claims thereof for whatsoever damages, loss and other harm by the Customer shall be limited to claims and titles as stipulated in Sec. XIII of these General Conditions.
7. The Supplier shall be entitled to perform the deliveries and services as well as the corresponding invoicing in portions, unless such partial performances are unreasonable to the Customer.

V. Delivery / packaging / storage / transfer of risk upon Customer's delay

1. Unless otherwise expressly agreed upon, deliveries shall be made EXW (Incoterms 2010) at the place of business of the Supplier.
2. At the Customer's request and expenses, the Supplier will arrange insurance coverage for the deliveries against the usual risks of transport.
3. The Supplier shall not to have take-back transport and other packaging material as per the statutory regulation on packaging ("Verpackungsverordnung"). Accordingly, the Customer shall arrange for the disposal of the packaging material at its own responsibility and expenses.
4. In case of any delay of more than one month of the dispatch or the collection due to the Customer's request or fault, such period starting with the announcement for readiness, and that the Supplier has arranged for a storage of these products, the Supplier shall be entitled to claim storage charges of 0.5 % of the purchase price of the delivery for every commenced month from the Customer, limited, however, to a total of 5.00 % of the purchase price. However, parties by this are not bound to assert higher or lower storage charges.
5. Any storage as per Sec. V.4 is arranged by the Supplier at the sole and exclusive risk of the Customer, such transfer of risk taking place already upon the announcement of readiness for the dispatch or collection as per Sec. IV.3 second phrase.

VI. Take-back / disposal of WEEE equipment

1. Unless otherwise compulsorily stipulated by the Directive 2012/19/EU on Waste Electrical and Electronic Equipment ("WEEE Directive") and its transposition into applicable national law, the Customer hereby accepts responsibility and costs for the take-back and disposal of the Supplier's end-of-life products, thereby indemnifying the Supplier from his obligations in accordance with Sec. 16 (2) of the German Electrical and Electronic Equipment Act ("ElektroG") and from any third-party claims arising out of or in connection therewith.
2. The Customer shall contractually commit third-parties, to whom he distributes the Supplier's products, to duly dispose of those products at the end of their life in accordance with the legal provisions at the third parties' own expense and to ensure that similar obligations will be imposed by such third parties on the respective follow-up customer in case the products are redistributed again. If the Customer fails to contractually commit third parties to whom he distributes Supplier's products to accept the obligations for their disposal and to commit follow-up customers in the distribution chain, the obligation for the take-back and disposal of the end-of-life products according to the legal provisions shall remain with, and be fulfilled by, the Customer.
3. The Supplier's claim to have his obligations under the WEEE regulations and applicable national law assumed by the Customer shall expire at the earliest two years after the respective product has finally put out of service. The two-year term for expiry suspension shall start, at the earliest, upon receipt by Supplier of a written statement from the Customer that the respective product has reached its end of life.

VII. Customer's obligation to take delivery and services

The Customer may not refuse acceptance and receipt of deliveries and services on account of minor defects.

VIII. Terms of payment

1. Unless otherwise agreed upon, the Customer has to make the payment of the total price as contractually agreed upon in instalments as follows:
 - a) 50 % upon the submittal of the order confirmation by the Supplier or, if applicable, the issuance of the joint single contract document,
 - b) (1) 50 % upon the performance of the delivery and handing-over respectively
 - b) (2) in case that the Supplier has to perform also installation works
 - 25 % upon delivery and then
 - 25 % upon the execution of the installation works and handing-over.
2. Unless otherwise agreed upon, payment shall be made within a period of 7 days, this period starting with the date of issuance of the invoice; however, the Supplier reserves the right to perform the supplies and services subject to concurrent condition with respect to the payment or subject to an advance payment.

The Customer shall not be entitled to a cash discount.
3. Unless otherwise agreed upon, all payments shall be made in € (EUR).
4. The Customer shall render all payments onto the account of the Supplier free of charge for the latter.
5. The Customer is only entitled to offset or make use of its right of retention if the respective counterclaims are uncontested or legally established with final effect.

IX. Retention of title

1. The Supplier retains ownership on any products delivered until each and every account and claim against the Customer to which the Supplier is entitled under the business relationship has been duly satisfied (such product hereinafter: product subject to retention of title). The Customer shall be obliged to treat the products subject to retention of title carefully and shall undertake to effect a reinstatement value insurance for the products against damages caused by fire, water or theft at its own expense.
2. The Customer shall be entitled to resell and to use the products subject to retention of title within the normal course of Customer's business, provided that the Customer is not in default of payment; furthermore, the Customer for the duration of the retention of title may not pledge said products or assign them as a security. The Customer hereby assigns to the Supplier as security any and all claims arising from the resale of or any other legal basis connected to the products (including, but not limited to claims arising from insurance contracts or on grounds of tortuous acts); Supplier hereby accepts the assignment which shall also include any balance claims of current accounts.

The Supplier hereby revocably authorises the Customer to collect any of such assigned claims on the Customer's own behalf and for its own account; the Supplier reserves the right to revoke this authorisation which applies in particular if the Customer does not fulfil its payment obligations.

The Customer shall not be entitled to assign such claims, including an assignment for the purpose of collecting the claims by way of factoring.

3. Any processing and/or transforming of the products subject to retention of title shall take place on the sole behalf of the Supplier. If said products are processed so as to form a new product together with goods or items which do not belong to the Supplier, the Supplier shall acquire joint ownership in such new products in proportion of the value of the products subject to retention of title (amount of invoice including VAT) to the total value of the other items used (the point of time at which the event occurred is decisive here). The terms under this entire Sec. IX applicable to the products subject to retention of title shall apply analogously to the items arising from such processing.
4. If the products subject to retention of title have been intermixed or mingled with other items which do not belong to the Supplier, Supplier shall acquire joint ownership in such new products in proportion of the value of the retained goods (amount of invoice including VAT) to the total value of the other items used at the time of intermixing or mingling. If the products subject to retention of title have been combined in such a way, that the item belonging to the Customer is regarded as the main constituent it shall be agreed that the Customer shall assign the proportionate ownership to the Supplier.
5. It shall be the Customer's secondary contractual duty to store the products underlying the Supplier's ownership or joint ownership free of any costs and charges for the Supplier.
6. Claims against third parties arising from a combination of the products subject to retention of title with a plot of land shall be also assigned to the Supplier as security for the Supplier's claims mentioned in Sec. IX.1.
7. On the Supplier's request, the Customer shall inform the Supplier immediately to whom the Customer sold the products underlying the Supplier's ownership or joint ownership and which claims may result from the resale, as well as provide the Supplier at its own expense with an officially authenticated document stipulating the assignment of the claims.
8. The Customer shall be not allowed to dispose otherwise of the products subject to retention of title or products underlying the Supplier's joint ownership. the Customer shall inform the Supplier forthwith of any seizure or other act of intervention by third parties. The Customer shall be obliged to reimburse the Supplier for all costs related to the recovery by third parties of the products subject to retention of title and the claims.
9. In the event of the Customer's delay with payment or of a breach of essential contractual obligations due to at least negligence, the Supplier reserves the right to claim restitution of the products underlying the Supplier's sole or joint ownership. The assertion of such claim shall only be considered rescission of the contract if this is expressly declared by the Supplier.
10. In case of a court order to institute bankruptcy proceedings, the refusal of a court to institute such proceedings due to lack of sufficient assets or a justified petition in bankruptcy, the Supplier shall be entitled to rescind the contract and to demand instant restitution of his products and deliveries.
11. If the combined value of the Supplier's security interest exceeds the value of all secured claims by more than 10 %, the Supplier shall release a corresponding article or item of the security interest if so requested by the Customer.

X. Installation works

Unless otherwise agreed upon in writing, the following provisions shall apply to the installations works to be performed by the Supplier for the Customer.

1. The Customer shall be obliged to render and to provide on its account to the Supplier the following properly and thereby in particular complete and free of defects executed works and other services at the place destined for the execution of installation works to be performed thereupon by the Supplier (this destined place hereinafter referred to as „Place of Installation“)
 - a) any and all earth, construction and other ancillary works outside the scope of the Supplier including but not limited to the necessary skilled and unskilled staff, construction materials and equipment and tools;
 - b) any and all devices and means required for the execution of the installation works and, if any, the commissioning and start of operation comprising in particular but not being limited to installation equipment (including again inter alia scaffolding, lifting equipment and other devices) and installations tools as well as fuels and lubricants;
 - c) energy and water and, if any, other required means including connections at the Place of Installation as well as heating, air-conditioning and ventilation and lighting;
 - d) in order to store and keep safe the products delivered and the installation equipment and tools all provided by the Supplier as well as all installation materials and means and equipment and tools and all other materials and means provided by the Customer, sufficiently sized and suitable and dry and adequately protected and lockable premises, and in order to grant the Supplier's staff proper working conditions, and in accordance with international standards, proper working and recreation space including sanitary facilities;
 - e) protective devices and clothing, if so required by the circumstances;
 - f) free access to the Place of Installation and the Place of Installation as such free of any items hindering, and properly prepared and levelled for, the execution of the installation works;
 - g) furthermore, any and all information on safety regulations including an adequate briefing.
2. In order to enable the Supplier to have his products properly implemented into and activated in connection with the Customer's pipework as well as the commissioning of these products, the Customer shall secure that
 - a) the wiring of the voltage supply and of the output supply and the ultrasonic transducers is properly executed and finalised;
 - b) the respective relevant pipes are stripped and freely accessible and, furthermore, that the flow of means to be transported by these pipes is effected under normal conditions;
 - c) the relevant pipes are accessible for measuring equipment and all other equipment, tools and devices.

General Terms and Conditions for the supply and assembly of products

of the FLEXIM GmbH-Group

3. Prior to the installation works, the Customer shall provide the Supplier without prior request by the Supplier with all data concerning the nature, location and static information of the relevant pipes and systems transporting power, gas, water and other utilities (hereinafter jointly referred to as "Utilities") including in particular also those Utilities, which are concealed.
4. The Customer shall render all devices and means and services to be provided by the Customer prior or during the installation works to be effected by the Supplier comprising in particular but not limited to the provision of all devices and means and services and implementation support prior or during the installations works pursuant to Sec. X.1, X.2 and X.3 (all such rendering of all devices and means and services and implementation support prior or during the installations works pursuant to Sec. X.1, X.2 and X.3 hereinafter referred to as "Customer Provisions") in due time and in a manner that allows the performance of the proper installation works without any hindrance due to a lack of Customer Provisions.
5. In case of a delayed start, execution or completion of the installation works due to a lack of Customer Provisions or due to other circumstances not caused by at least negligence by the Supplier, the Customer shall bear all additional accrued costs and lead times or deadlines, if any, shall be prolonged. Any and all other contractual or legal claims of the Supplier shall remain unaffected by this.
6. Unless otherwise agreed upon, the Supplier shall charge time exposures for the installation works on the basis of his established valid rates; travelling or idle time exposures will be charged as working time. The additional remuneration for further costs and expenses for the staff and other matters pursuant to Sec. III.2 shall remain unaffected by this.

The regular working hours (working days only) are as follows:

- Monday to Thursday: 8:00 a.m. until 5.00 p.m.
- Friday: 8.00 a.m. until 1.00 p.m.

The following general rates per hour shall apply:

- Technicians for installation works 150,00 €
- Staff member for the support of systems (data-processing equipment and soft-/hardware) 200,00 €
- Expert technicians for other services 250,00 €
- Staff member for project planning 250,00 €

Overtime, the work done at night or on a weekend or during a public holiday, or work done in case of hardship, the following surcharges apply:

- a) Overtime (all time exposures outside of regular working time on working days): 50% surcharge;
 - b) Night work on working days between 8.00 p.m. until 6.00 a.m. (where applicable, in lieu of the surcharge mentioned in a)): 60% surcharge;
 - c) Work on Saturdays and Sundays (where applicable, in lieu of the surcharge mentioned in a) and b)): 60% surcharge;
 - d) Work on public holidays, as well as on days which are public holidays at the place of business of the Supplier, as well as on the 24th December and 31st December (for all such days from 0.00 a.m. until 12.00 p.m.) (where applicable, in lieu of the surcharge mentioned in a), b) and c)): 100% surcharge;
 - e) Work performed under substantial impact of dust, soot, smoke, fumes, heat or noise and unless caused by at least negligence by Supplier, in addition to the other surcharges mentioned in a), b), c) and d): hardship surcharge of 15%.
7. The Customer shall attest the Supplier the time exposure spent for working and travelling and for the idle time as well as the provided services on the performance record submitted by the Supplier. Should the Customer refuse such attesting or in case the Supplier is unable to receive such attestations for other reasons, any and all invoicing shall be made on the basis of the Supplier's records.

XI. Warranty

1. Any and all warranty claims as to thermocouples, resistance thermometers, couplants, seals, damping materials and accumulators shall be subject to a limitation period of twelve months, and as to all other products and elements there of 24 months. Such limitation period, however, shall not apply with respect to any claims on damages due to warranty liabilities in the case the Supplier is compulsively liable for the damage by law either without fault, or in case of intention or gross negligence, or in case of death or bodily injury or damage to health due to at least negligence; in such cases, the limitation periods pursuant to the legal provisions shall apply.
2. The Customer may only claim damages if he in accordance with Sec. 377 HGB (German Commercial Code) has properly fulfilled its obligation to examine the products and notify the Supplier of any damages within a period of 7 days and within this period prior to any installation or connection with another item.
3. In the event of a justified warranty case the Supplier shall be entitled to remedy the defect at his sole discretion by either repair or delivery of a substitute product.
4. In case that the Supplier fails to remedy the defect, the Customer shall be entitled in its choice to a reduction of the purchase price or a cancellation of the contract. The Supplier shall be deemed to have failed to remedy the defect in case that two such attempts have not been successful unless with regard to the contractual object further attempts are suitable and reasonable to the Customer.

5. Warranty claims shall be excluded in case of only insignificant deviations from the agreed quality, only minor impairment of use, materials approved by the Customer, natural wear and tear, and in case of damages arising after the transfer of risk due to faulty or at least negligent treatment or use, or treatment or use against the rules, or excessive strain, unsuitable means of operation, improper construction works, inappropriate Place of installation, particular external influences not assumed under the contract or non-reproducible software errors. Furthermore, warranty claims shall be excluded also in case that the Customer or a third party has modified the products or has carried out or omitted maintenance works improperly or against the instructions of the Supplier, on in case of lack of required maintenance at all. The Supplier shall also not be liable for the quality or condition of the products resulting from the design or material if such design or material has been determined by the Customer.
6. Notwithstanding other exclusions of warranty, Customer shall also not be entitled to warranty claims if and insofar the Customer has remedied the defect by a workshop or a service point not authorized by the Supplier.
7. Any and all claims raised by the Customer for expenses required within the process of remedying of defects, in particular costs of transport, travelling, labour and material, shall be excluded, if such costs have arisen on the ground that the products after delivery have been transferred to a place different from the place of business of the Customer or, if any, Place of Installation unless such transfer corresponds to the product's intended use.
8. Any and all warranty claims shall be restricted to direct damages, and, within this limitation, be limited further to an amount equal to the remuneration that is attributable to the defective delivery or service (or only portions thereof, if applicable). Any further warranty claims against the supplier including, in particular, claims on indirect or consequential damages, in particular again loss of profit, shall be excluded.
9. The above exemptions from, and limitations of, liability do not apply where liability is compulsory by law either without fault, or in case of intention or gross negligence, or in case of death or bodily injury or damage to health or breach of essential contractual obligations due to at least negligence. Notwithstanding the aforesaid, however, the liability for breaching essential duties under a contract shall be limited to the typically foreseeable damage, unless the Supplier is compulsively liable for the damage by law either without fault, or in case of intention or gross negligence, or in case of death or bodily injury or damage to health due to at least negligence. This provision shall not imply a change in the burden of proof to the detriment of the Customer.

XII. Returning of products

In case that the Customer undertakes to return products to the Supplier for whatsoever reason, in particular thereby for the purpose of calibration or repair (within and beyond warranties) and with respect to an ended lease contract, the Customer shall be obliged to indicate always the RMA-number determined by the Supplier. Furthermore, the products to be returned shall be clean and free of any foreign matters in particular, but not limited to any chemicals which shall be confirmed by the Customer at least in writing ("Textform" as per Sec. 126 b German Civil Code ("BGB")) unless not returned for warranty reasons.

XIII. General liability

1. Unless already determined in particular in Sec. XI, any and all claims for damages or expenses (hereinafter jointly referred to "Damage Claims") of the Customer against the Supplier, irrespective of their legal grounds, in particular arising from faults upon the conclusion of contracts, breach of contractual obligations or unlawful acts, shall be excluded.
2. The aforesaid does not apply where liability is compulsory by law either without fault, or in case of intention or gross negligence, or in case of death or bodily injury or damage to health or breach of essential contractual obligations due to at least negligence. The liability for breach of essential contractual obligations shall be limited, however, to the compensation of the typical foreseeable damage, unless liability is compulsory by law either without fault, or in case of intention or gross negligence, or in case of death or bodily injury or damage to health due to at least negligence. This provision does not imply a change in the burden of proof to the detriment of the Customer.

XIV. Intellectual property rights and copyrights

1. Unless otherwise agreed upon, the Supplier shall be obliged to perform the deliveries or services free of third parties' intellectual property rights and copyrights (hereinafter referred to as Proprietary Rights) solely in the country of the place of delivery resp., if any, at the Place of Installation.
Even in such case, however, the Supplier shall not be liable for any claims due to infringement of any third party's Proprietary Rights if the Customer or any legal entity directly or indirectly owned or controlled by the Customer through capital or voting shares, holds, or held, title to the Proprietary Rights.
2. The Customer shall be obliged to immediately inform the Supplier of any (alleged) infringement of Proprietary Rights of third parties and respective risks becoming known to him and to grant the Supplier, as far as possible, upon his request the right of action both for judicial and extra-judicial cases in order to refuse any and all claims.
3. In case of an infringement of third party's Proprietary Rights, the Supplier shall at his sole discretion be entitled to either obtain a right to use the product respective perform the services, or modify such product or services in such a way that they do not infringe these Proprietary Rights any more, or to replace such product or service by a product or service which do not infringe these Proprietary Rights any more. In case that the Supplier cannot exercise such right at adequate conditions or within a reasonable time, the Customer provided, however, that he has enabled the Supplier to remedy the infringement of the Proprietary Rights, shall be entitled to exercise the statutory rights of rescission. Correspondingly to this, and subject to the fulfilment of the above conditions, also the Supplier shall be entitled to withdraw from the contract.

4. In the event that the Customer ceases to use the product or the services due to an (alleged) infringement of third party's Proprietary Rights in order to reduce damages or for any other substantial reason, the Customer shall be obliged to advise the third party asserting the infringement of the Proprietary Rights that the ceasing of the use shall not be deemed as acknowledgment of the infringement of Proprietary Rights.
5. Any Customer's claims with respect to an infringement of third parties' Proprietary Rights shall be excluded insofar as the Customer himself is liable for such infringement of Proprietary Rights.
Furthermore, any Customer's claims shall be excluded in the case that the infringement of Proprietary Rights of a third party was caused by a specific instruction by Customer or by any use which was unforeseeable for the Supplier, or due to a modification effected or joint use with other products or services not performed by the Supplier, by the Customer.
With respect to any remaining claims regarding the infringement of Proprietary Rights of third parties the stipulations as per Sec. XIII shall apply.
6. Any and all claims with respect to the infringement of Proprietary Rights of third parties shall be subject to as limitation period of twelve months, such period starting with the transfer of the risk of the respective accomplished delivery or service. Such limitation period, however, shall not apply with respect to any claims on damages due to a liability of the Supplier by compulsory law either without fault, or in case of intention or gross negligence, or in case of death or bodily injury or damage to health due to at least negligence; in such cases, the limitation periods pursuant to the legal provisions shall apply.
7. Any and all further claims or other claims not stipulated in this Sec. XIV 1. to 6 with respect to the infringement of Proprietary Rights of third parties shall be excluded, unless otherwise determined by compulsory law.

XV. Secrecy / limited use

1. The Customer shall be obliged to keep all depictions, plans, drawings, sketches, calculations and other technical documentations as well as know-how and other technical information of the Supplier strictly confidential and in particular not to disclose or otherwise make available to any third party, and only to make use of it within and for the duration of the respective contract. The obligation to secrecy and limited respective after termination or ceasing of the contract interdicted use shall continue to last and shall only cease if and insofar the technical knowledge embodied in these depictions, plans, drawings, sketches, calculations and other technical documentations as well as know-how has become generally known.
2. The existence of the business and contractual relations with the Supplier as well as all contractual terms and conditions as well as all related commercial and technical details and also all provided deliveries and services and their details shall be deemed business secrets of the Supplier. The Customer shall not be entitled to disclose them or make them otherwise available to third parties without prior written approval by Supplier.

XVI. Governing law / arbitration

1. The law of Germany shall apply.
2. All disputes, controversies or differences between the parties which cannot be settled by negotiations shall be decided finally by the International Court of Arbitration of the ICC in Paris according to the rules of the International Court of Arbitration by three arbitrators appointed to said rules. Place of arbitration shall be Berlin (Germany); language of arbitration shall be English.

XVII. Miscellaneous

1. Place of performance shall be the place of business of the Supplier.
2. For the sake of good order the Supplier herewith points out that he is bound with respect to the export of goods and services to the domestic and international statutory laws and regulations. Thus all deliveries and services to be rendered by the Supplier are therefore subject to the condition that the relevant permits and licenses have been granted and also all other export requirements have been met.

D2/D234-18