

General terms of business and conditions of supply (T&C)

of

EWM AG

I. Scope of application

These General Terms and Conditions apply to the sale of the equipment of EWM AG as well as the services offered by EWM AG. The GTCs of the customer are expressly rejected unless they have been expressly recognised. This also applies if EWM AG expressly fails to reject them again when submitted.

II. Quotations and order

Quotations of EWM AG are subject to change without notice. A contract is only formed as a result of written order confirmation. Written and oral agreements only become effective as a result of written confirmation by EWM AG. Amendments and additions to the written contract documentation of EWM AG must also be made in writing.

III. Delivery and performance

All deliveries, sales transactions and services rendered in the context of business relationships shall take place under the GTCs of EWM AG. The quotations of EWM AG are non-binding and subject to change without notice and require written order confirmation. Deliveries are made, insofar as legally prescribed and contractually agreed, subject to the proviso of approximate delivery times. Delivery times are met if EWM AG is unable to dispatch on time without fault on its part. EWM AG reserves absolute rights of exploitation in respect of legal title and copyright law to cost estimates, drawings and other documents. Documents may only be made available to third parties with the prior consent of EWM AG. If the order is not placed, drawings and other documents which are part of quotations must be returned on demand. This applies in a corresponding manner to the documents of the purchaser. These may only be made available to third parties, however, if EWM AG has permissibly assigned the delivery/performance.

IV. Prices

The prices quoted by EWM AG are valid for delivery, not including set-up or assembly, ex works, plus value added tax as amended from time to time and freight charges. The prices specified in the quotation are subject to change without notice, whereas the prices set out in the version of the price list of EWM AG applicable at the time and valid on the day of the delivery are definitive. Turnover tax, freight, insurance and other ancillary costs are charged separately. EWM AG is entitled to make price adjustments. The goods shall be dispatched in appropriate packaging. The commercial customer must take out separate transport insurance. EWM AG complies with the regulations of the VDE (Association for Electrical, Electronic and Information Technologies) which, where admissible, become an integral part of the contract.

V. Payments

The invoices of EWM AG are due and payable immediately, except where otherwise agreed. In the event of delay in payment, EWM AG is entitled to charge interest on arrears. Claims for damages above and beyond this by EWM AG on account of default remain unaffected. Delay in payment by the customer entitles EWM AG to refuse a further delivery.

VI. Retention of title

The goods of EWM AG remain the property of EWM AG until full and final payment.

In the absence of written consent the customer is not entitled to sell goods supplied to him before full and final payment has been made.

In the event of processing, the acquisition of ownership by the customer is not allowed until full and final payment. If goods in the ownership of EWM AG become an essential component part of another article as the main article, ownership shall remain with EWM AG in the amount of the proportion of co-ownership in the newly manufactured article. In the event of processing with other goods likewise supplied by EWM AG and subject to retention of title, EWM AG is entitled to co-ownership in the new article in the ratio of the value of the conditional goods to the total value. The claim of the customer arising from any resale of the goods of EWM AG shall be assigned to EWM AG and serves to secure the claim. These rights include all ancillary rights and collateral. At the request of EWM AG, the customer is obliged to assign assignments to purchasers and to pass on all necessary information to EWM AG for the assertion of its rights against the purchaser and to surrender the documents. Pledging or transfer by way of security of goods supplied conditionally is prohibited. EWM AG must be informed immediately about levies of execution, including details of the garnisher. The goods supplied conditionally shall be stored free of charge. The customer must insure them against the usual risks such as fire, theft and water damage. The purchaser assigns his claims for compensation in respect of insurance companies to which he is entitled arising from damage to the goods supplied conditionally to EWM AG in the amount of its claim.

VII. Passage of risk of delivery and performance

Delivery ex works is deemed to be agreed, except where otherwise agreed.

EWM AG is entitled to make partial deliveries, insofar as they are reasonable for the purchaser. The risk of accidental perishing shall pass to the commercial customer as soon as the goods have left our factory. Compliance with agreed deadlines presupposes the timely receipt of all documents, required permits, plans and other obligations to be supplied by the customer. The deadline is deemed to be met in the event of delivery, not including set-up or assembly, of the ordered consignment within the agreed delivery deadlines. If the delivery is delayed for reasons for which the customer is responsible, the deadline is deemed to be met when the fact that readiness for dispatch has occurred has been notified. If EWM AG is not culpably prevented from meeting the delivery date, the date of performance shall be postponed by a reasonable period, particularly in the case of force majeure and other circumstances for which EWM AG is not at fault. If shipment is delayed at the wish of the customer, EWM AG may demand reasonable storage charges. Claims for compensation due to delay in the delivery are excluded, insofar as they are not mandatorily prescribed by law. EWM AG may require the customer to be obliged to declare, within a reasonable period of time, whether the latter will withdraw or insist upon delivery.

VIII. Set-up and assembly

When setting up and assembling the goods of EWM AG, the customer must assume the costs of the required support personnel. In addition, he must undertake all extra work such as construction, caulking, scaffolding, plastering and painting work. The customer must provide the equipment and hardware required for assembly and operation such as, for example, chocks, cement, mats, plaster, lubricants and fuels, trestles and chain hoists. He must see to it that all required connections for electricity and water exist and that protective clothing and safety devices are available. Before the start of assembly work, the customer must provide the necessary information regarding concealed electricity, gas and water mains/pipes. EWM AG is not liable for work which is not connected with the work ordered. If EWM AG has undertaken set-up or assembly at extra charge, the fee rates of EWM AG shall apply.

IX. Warranty/defect liability

In the event of defects, EWM AG is liable in accordance with the statutory provisions with the following distinctive features: all those parts and services are subject to the obligation to remedy defects which have become defective within the statutory time limits calculated from the date of the passage of risk as a result of a circumstance occurring before the passage of risk, or the usefulness of which has been impaired. The identification of such defects must be asserted to EWM AG by the commercial customer immediately in writing. EWM AG is liable only in the event of intent and gross negligence and rules out further liability where admissible. In the event of ordinary negligence further losses, in particular for lost profits and other losses, are excluded. The above limitation of liability and the above exclusions of liability do not apply to claims which have caused personal injury and damage to property due to defective products.

Rights of the customer are excluded if the purchaser has not, or has not fully, observed the directions for use and operating instructions or if there is any other form of improper operation. If the commercial customer has notified a defect in writing within the warranty period, his claims to warranty shall lapse one year following the dispatch of the notification.

EWM AG shall not be required to render compensation for loss or damage sustained by the customer or other persons arising from delayed deliveries or from the total impossibility of a delivery as a result of statutory or regulatory export restrictions unless EWM AG has acted intentionally or with gross negligence. The same shall apply for loss or damage incurred by the customer or third parties due to impossibility of delivering replacement parts or accessories, or impossibility of delivering them punctually, as a result of export restrictions. EWM AG shall have the right to withdraw from the contract if disruptions or obstacles to exports occur due to statutory or regulatory export restrictions after conclusion of the contract.

X. Applicable law and place of jurisdiction

For traders, the following is added:

The contractual relationship is subject to the law of the Federal Republic of Germany, in particular to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG) and international private law. The exclusive place of jurisdiction for all contractual claims and claims in connection with this contract is Koblenz.

XI. Severability clause

If individual provisions of these terms and conditions or the other elements of the contract are or become ineffective, the remaining provisions shall remain in effect. This shall not apply if adherence to the contract would constitute an undue hardship for one of the parties to the contract.

General terms of business and conditions of supply of EWM AG

I. Extent of goods and services supplied

The written declarations of the parties on both sides (supplier/ vendor and orderer/purchaser) govern the extent of the goods or services supplied. Our quotations are non-binding and subject to alteration. Terms and agreements, and deals arranged via our representatives only become binding following our written order confirmation. Protective equipment is only supplied if statistically prescribed or expressly agreed. The regulations of the Verband Deutscher Elektrotechniker (Association of German Electrical Engineers) apply to all goods or services supplied in so far as they may be applicable with regard to the safety of the goods or services supplied. Deviations are permissible provided the same security is provided in another way. The supplier reserves unlimited rights of ownership and copyright exploitation in cost estimates, drawings and other documents; they may be made available to third parties only with the prior consent of the supplier. If the order is not awarded to the supplier, drawings relating to quotations and other documents are to be returned on demand without delay. Sentences 1 and 2 apply as appropriate for documents from the orderer; these may however be made available to third parties to whom the supplier has legitimately transferred the supply or performance. The orderer's terms and conditions of purchase are hereby expressly countermanded irrespective of when and how the orderer drew the supplier's attention thereto. Exclusively the supplier's conditions of supply are taken as agreed. Ancillary agreements are only effective if confirmed in writing.

II. Prices and packaging

Prices apply for delivery ex works without installation or assembly, including the prevailing Value Added Tax. Packaging is charged and cannot be taken back. State and other taxes which could not be taken into account when the price was fixed but which directly or indirectly increase the price of goods are to be borne by the orderer. The supplier is entitled to make price changes if price increases due to increased charges for raw materials, wages, energy or other items arise between the conclusion of contract and delivery. Due to production tolerances, a total difference in delivered volume is possible, and could diverge by +/- 10% from the ordered volume. The price for the actual delivered volume will reflect this.

III. Reservation of title

The supply of goods is effected with reservation of title in accordance with Section 455 of the German Civil Code (BGB), with the following extensions: Until all outstanding claims by the supplier on the orderer under the business relationship are completely paid for, the goods remain the property of the supplier. This applies particularly in the event that the contracting parties are in a standing account relationship. The agreed reservation of title applies particularly with respect to the balances arising at any time. The reservation of title remains valid on delivery of a cheque, bill of exchange or similar, even when paid in. The monetary amount collected by the supplier when it is paid in or discounted is viewed solely as performance on account. The claim is only settled if it has been ensured that the supplier is no longer presented with any rights of recourse of any kind. Under Section 950 of the German Civil Code, any acquisition by the orderer of the right of title for the reserved goods in the event of processing the said goods into a new object is excluded. Any processing of this kind by the orderer is carried out for the account of the supplier. The term processing shall specifically include the incorporation or assembly of the supplied goods into or with other parts and objects. In respect of the right of third-party suppliers, the newly manufactured object serves as security for the current total claim of the supplier under the business relationship, in the amount of the co-ownership proportion. To this extent, the orderer takes over the obligations of a custodian, though without receiving any payment in respect of such custodianship and the orderer can demand no recompense for expenses or similar. The limitation of liability under Section 690 of the German Civil Code does not apply. In the event of processing by the orderer with other goods likewise supplied with reservation of title and/or the processing clause, the supplier is entitled to co-ownership in the new object in proportion to the value of the reserved goods to the total goods value, namely a t the date of processing. Failing that, the supplier acquires sole ownership of the newly manufactured object. The newly manufactured object counts as reserved goods under these conditions. If the value of the reserved goods exceeds the value of the outstanding balance of accounts receivable by more than 20%, at the orderer's request the supplier agrees to reassignment to this extent. This right is only to be asserted by the orderer, it is not transferable and cannot be relinquished for exercise by any third party. The orderer's account receivable arising from the resale of the reserved goods is assigned to the supplier herewith, regardless of whether the reserved goods are resold with or without agreement or whether they are resold to one or more buyers. The assigned claim serves to secure the conditional vendor for all claims mentioned under Section 2. In the event that the reserved goods are sold by the orderer together with other goods not belonging to the supplier, whether without or after processing, the assignment of the purchase price claim applies only in the amount of the value of the reserved goods which are the object or part of the purchase object of this purchase contract along with the other goods. This applies however only in the event that the orderer has already assigned the proportional purchase price claim to third parties. If no such assignment subsists, the supplier acquires the entire purchase price claim despite any co-ownership which may exist. The orderer is entitled and authorised to resell and sell on the reserved goods only with the proviso that the purchase price amount receivable from the resale passes to the supplier in accordance with the specified conditions. The orderer is not entitled to make other dispositions with regard to the reserved goods. The prior assignment contained in the above-mentioned sections comprises all subsidiary rights, guarantees and similar. At the supplier's behest, the orderer must inform the buyers of the assignment and provide the supplier with the information and surrender the documents necessary for the latter to assert its rights vis-à-vis the buyer. Notice to the supplier is basically required before conclusion of a purchase contract with buyers if the purchase price exceeds EUR 13,000.00. This notwithstanding, the orderer always retains the above-mentioned obligations at the express demand of the supplier. The orderer is authorised to collect the amount receivable from the resale despite the assignment only if the consent of the supplier is to hand. The supplier has the right at any time to collect the amounts receivable itself. However, the supplier grants herewith consent – revocable at any time – for the orderer to collect the amounts due as long as the orderer duly fulfils its payment obligations. If the orderer is in arrears or default with payment, the consent is withdrawn with immediate effect. After falling behind with payment, the orderer is only authorised to collect the amounts receivable again if a new written declaration of consent from the supplier is to hand. In the event of payment arrears, the orderer must also give notification of every debtor of the assigned receivable and communicate such assignment to the debtors. As already set out herein, the reservation of title also remains extant if individual or all amounts due to the supplier are received in a standing account and the balance is collected and acknowledged. The supplier's reservation of title is conditional to the effect that the orderer acquires entitlement to unconditional transfer of title upon full payment of all the amounts due to the supplier. In every case, ownership does not pass automatically to the orderer without a further legal declaration by the supplier. Mortgaging or transferring the reserved goods or assigned receivables by way of collateral is not permitted. The supplier must be immediately notified of any seizure, together with particulars of the creditor concerned. The orderer is to look after the reserved goods for the supplier without payment. He must insure them against the usual risks such as fire, theft and water damage to the usual extent of cover. The orderer herewith assigns to the supplier its entitlement to compensation due to him from insurance companies or other secondary obligors in connection with losses of the above kind, in the amount of the receivables owing to the supplier.

IV. Payment conditions

The supplier's invoices are due immediately upon receipt by the orderer and are to be paid by the latter at an available payment office of the supplier. The orderer can make payments with debt-discharging effect only to the supplier or persons who can present a written authority of collection on behalf of the supplier. Payments by means of a bill of acceptance or trade bill require special prior written agreement. In the event of payment by bill of acceptance – with a term not in excess of three months, issued within a week of the date of the invoice – discount expenses are charged at the bank discount rate. Credits via bills or cheques become applicable - subject to receipt and irrespective of any earlier due date - upon the orderer's default. They are effected at the value date on which the supplier has access to the proceeds. Discount expenses are charged at the current bank discount rate. Orderers may offset or exercise a right of retention exclusively against counterclaims acknowledged in writing or legally established. Under Section 286 of the German Civil Code, the orderer falls into arrears, without requiring warning thereof, if it does not settle the amount of the invoice at the latest within 30 days after the due date and receipt of invoice. With the commencement of arrears, the supplier can charge late-payment interest at 8 percentage points above base rate from the due date. If the orderer falls into arrears with payments or if its trading situation significantly deteriorates, the supplier is entitled to demand immediate cash payment for goods already delivered under this or all contracts with the same orderer regardless of any agreed payment period, or, if it so chooses, it may withdraw from the contract and/ or demand compensation for nonfulfilment of the contract. The supplier can in such cases also refuse to continue supply any part deliveries and take back at the orderer's expense the goods supplied under reservation of title. The same applies if circumstances obtain at or prior to the conclusion of the contract which made the creditworthiness of the orderer appear doubtful but which only became known to the supplier after conclusion of the contract.

V. Time allowed for supplies of goods and services

The supplier is entitled to make part deliveries to the extent they are appropriate for the orderer. With regard to the time allowed for supplies of goods and services, the written declarations of the parties on both sides under Article 1, clause 1 are decisive. Compliance with deadlines presumes the receipt in good time of all documentation, required permits and authorisations to be supplied by the orderer, the clarification and authorisation of plans in good time, compliance with agreed payment conditions and other obligations. If these preconditions are not fulfilled in good time, the time allowed is extended correspondingly; this does not apply if the supplier is responsible for the delay. The deadline counts as complied with: a) in the event of delivery without installation or assembly if the fully operational shipment was dispatched or collected within the agreed delivery or performance time. In the event that the delivery is delayed for reasons that are attributable to the orderer, the deadline counts as complied with upon notification of readiness for dispatch within the agreed time; b) in the event of delivery including installation or assembly, as soon as this has taken place within the agreed time. If the supplier is prevented from meeting a deadline for performance, the deadline for performance is put back by an appropriate period. This applies especially in the event of force majeure or the occurrence of circumstances that are not the fault of the supplier, such as mobilisation, war, riot, strikes, lockouts or other unforeseeable obstacles or difficulties of supply experienced by the supplier due to failure of self-supply. The foregoing does not apply if the supplier is responsible for the delay. In the event of noncompliance with the deadline for reasons other than those cited in Section 3, if it can be substantiated that it has sustained a loss as a result of the delay the orderer can demand compensation amounting to 0.5% up to a total amount of 5% of the value of the part of the goods or services which could not be put to useful account because of the failure to complete individual appurtenant objects in good time for delayed performance, for each full week of delay. The orderer may also demand payment of the compensation for delay if the circumstances set out in 3. above occur only after tortious overrun of the originally agreed period. Claims by the orderer for compensation in excess of the above limit of 5% are excluded in any event of delayed delivery, even after the expiry of a period of grace allowed to the supplier. This does not apply in so far as liability appertains obligatorily under Article X, Section 1, sentence 2. The orderer can only withdraw from the contract within the framework of statutory conditions inasmuch as the delay in delivery is the fault of the supplier. If dispatch or delivery is delayed at the wish of the orderer, the orderer may be charged for storage at a rate of 0.5% of the invoiced amount for each month begun, beginning one month after notification of readiness for dispatch; the storage charges are capped at 5%, unless higher charges can be provably justified. Claims for compensation by the orderer on account of delay in delivery and/ or nonperformance going beyond the threshold mentioned in 4. above are excluded in all cases of delayed delivery, even after the expiry of a period of grace allowed to the supplier for the delivery, unless liability applies compulsorily under

Article X, Section 1, sentence 2. The buyer may withdraw from the contract within the framework of statutory conditions after allowing a period of grace to no effect, in so far as the delay in the delivery is the fault of the vendor. At the supplier's request, the orderer must declare within an appropriate period whether it is withdrawing from the contract because of the delay in delivery and/ or demanding compensation instead of the performance or delivery.

VI. Insurance, transfer of risk, acceptance

The risk passes to the orderer, even if free delivery has been agreed: a) in the event of delivery without installation or assembly, if the fully operational consignment has been dispatched or collected. Packaging and dispatch are undertaken by the supplier with the utmost care and judgment. At the orderer's wish and expense, the dispatch will be insured by the supplier against breakage, transport and fire losses. b) in the event of delivery or assembly, on the day of acceptance into operation; if a trial operation is agreed, after faultless trial operation. It is presumed in such cases that the trial operation or acceptance into operation takes place immediately following the installation or assembly to operational condition. If the orderer does not accept the offer of a trial operation or acceptance into operation, the risk for the period of the delay passes to the orderer after the expiry of a period of 14 days after this offer. c) If the dispatch, delivery or beginning or execution of the assembly or installation is delayed at the desire of the orderer or for reasons attributable to it, the risk for the period of delay passes to the orderer, but the supplier must, at the request and expense of the orderer, take out the insurance cover required by the orderer. 2. Objects supplied must be accepted by the orderer even if they display insignificant problems.

VII. Installation and assembly

Section A: The following conditions apply for every kind of installation and assembly unless otherwise agreed in writing:

- a) The orderer must accept and make available in good time:
 - 1.) Auxiliary teams such as general labour and, if required, bricklayers, carpenters, fitters, crane operators, other skilled workers together with the tools they require in the requisite number.
 - 2.) All earthworks, bedding work, construction work, core work, scaffolding, plastering, painting and other extraneous subsidiary works, including the construction materials needed for these.
 - 3.) The necessary objects and materials required for assembly and commissioning, such as scaffolding poles, wedges, bases, cement, plaster and sealing/ packing materials, lubricants, fuels, etc, also trestles, lifting equipment and other appliances.
 - 4.) Motive power and water including the necessary connections to the point of application, heating and general lighting.
 - 5.) Sufficiently large suitable and lockable spaces at the assembly site to safeguard machine parts, equipment, materials, tools etc., and appropriate working and residential rooms suitable for the assembly personnel including sanitary facilities appropriate to the circumstances, and generally the orderer has to take the [same] steps to protect the property of the supplier and assembly personnel on the construction site that it would take for the protection of its own property.
 - 6.) Protective clothing and protective equipment which may be required as a consequence of the particular circumstances of the assembly site and not routinely required in the supplier's business.
- b) Before assembly work begins, without prompting, the orderer must have ready and make available the necessary information about the position of covered electricity, gas or water conduits or similar installations.
- c) Before installation or assembly starts, all the supply parts required for the start of works must be on site and all bricklaying, carpentry and other preparatory works be sufficiently advanced before erection starts that the installation or assembly can begin immediately following the arrival of the installation or assembly team and continue without interruption. In particular, the delivery path and erection or assembly site must be levelled and cleared at floor level, the base works set and dry, the plinth levelled and backfilled, in the case of internal installations the wall and ceiling plastering must be completely finished and in particular doors and windows must be inserted.
- d) If the erection, assembly or commissioning is delayed by circumstances, particularly on the construction site, without the supplier being at fault (creditor delay), the orderer has to bear to an appropriate extent the cost of waiting time and additional journeys of the installation or assembly personnel.
- e) The orderer must certify the installation or assembly personnel work time weekly according to the best of its knowledge. The orderer must also hand over to the installation or assembly personnel without delay a certificate about the completion of the installation or assembly work.
- f) The supplier is not liable for the work of its erection or assembly personnel and other subcontractors in so far as the work is not connected with the delivery and erection or assembly or are caused by the orderer itself.

Section B: If the supplier has taken on the work of erection of assembly as a separate job, the following apply in addition to the conditions in Section A: The orderer will pay the supplier the cost rates for work time agreed on commissioning of the work plus surcharges for overtime, night work, Sunday and holiday work, for work in difficult conditions and for planning and supervision. Preparatory time, travel time and running times and responses count as work time. The following costs are charged separately: a) travel costs, costs of transport of hand tools and personal luggage. b) allowances for work time and rest-days and holidays.

Section C: If the supplier demands acceptance of the delivery after completion, the orderer must undertake this within two weeks. If this is not done, acceptance is deemed to have taken place. The same applies if the delivery is used.

VIII. Complaints and guarantees

The supplier is liable for defects, which include the absence of warranted characteristics, as follows: All parts or services which become unusable or whose serviceability has become considerably impaired within the statutory period (without regard to the operating time) calculated from the day the risk was transferred, as a result of a circumstance dating from before the transfer of risk, particularly because of deficient design, poor materials or defective execution are, at the supplier's choice, to be remedied, resupplied or provided anew without cost. Following ascertainment, such defects must be notified to the supplier at once in writing. Claims in respect of quality defects always lapse in 12 months. This does not apply in so far as the law stipulates longer periods obligatorily under Section 438, para., 1, no. 2, Section 475 II, Section 479 para. 1, and Section 634 a), para. 1, no. 2 of the German Civil Code. The orderer must comply with the contractual obligations imposed on him, particularly the agreed payment conditions. If a complaint is asserted, payments by the orderer may be withheld to the extent that is in appropriate proportion to the defects that have appeared. If however the contract belongs to the operation of its trading business, the orderer can only withhold payments if a defect is asserted as to the legitimacy of which no doubt can exist. In remedying defects, the orderer must always grant the supplier the opportunity of subsequent fulfilment twice within an appropriate period. If it withholds these, the supplier is exempted from the complaint. Claims by the orderer regarding the expenses required for subsequent fulfilment, especially transport, labour and material costs, are excluded to the extent that the expenses are increased because the object of the subsequent delivery is subsequently moved to a place other than the orderer's premises, unless the transfer is in accordance with its agreed use. If the subsequent fulfilment fails, the orderer – regardless of any claims for compensation under Article X, Section 1, sentence 2 – can withdraw from the contract or reduce the consideration. The liability for defects does not apply to minor deviations from the agreed condition, including simple minor impairments to serviceability, to wholly natural wear and tear or to damage arising after the transfer of risk as a consequence of faulty or negligent handling, excessive stress, unsuitable operating resources, deficient construction works, unsuitable building sites or due to external influences such as chemical, electrochemical or electrical processes which were not presumed a priori under the contract, or in the case of non-reproducible software defects. The same applies if the orderer or third parties have carried out improper processing of or modifications or repairs to the object: no warranty claims can be made for these and the consequences thereof. Recourse claims by the orderer against the supplier under Section 478 et seq of the German Civil Code are excluded. Compensation for any recourse claims by the orderer was taken appropriately into account when the price was set. The parties have considered this compensation as an appropriate lump-sum discount. More far-reaching or claims by the orderer against the supplier and its subcontractor other than those regulated in Article V are excluded, in particular a claim for making good losses that have not arisen on the object of delivery itself. This does not apply inasmuch as liability applies obligatorily under Article X, Section 1, sentence 2. Sections 1 to 8 apply as appropriate to claims by the orderer for remedying, replacement deliveries or compensation arising from suggestions or advice within the framework of the contract or the breach of ancillary contractual obligations.

IX. Impossibility, adjustment of contract

If supply or performance incumbent on the supplier or orderer become impossible to fulfil, general legal principles apply with the following proviso: if the impossibility is to be attributed the fault of the supplier, the orderer is entitled to demand compensation. Nonetheless, the claim for compensation by the orderer is limited to 10% of the value of the part of the delivery or performance which cannot be taken into operational use because of the impossibility. Claims for compensation by the orderer in excess of the stated ceiling of 10% are excluded. This does not apply in so far as liability applies obligatorily under Article X, Section 1, sentence 2. The orderer's right to withdraw remains unaffected. Should unforeseeable events under Article V, Section 3, sentence 2 substantially change the economic importance of the content of the delivery or should they have considerable effect on the supplier's operations, the contract will be appropriately adjusted within the limits of good faith. In so far as this is not economically viable, the supplier has the right to withdraw from the contract. If it wishes to make use of this right to withdraw, it must notify the orderer directly after recognising the implications of the result, even if an extension of the delivery time had been agreed with the orderer.

X. Liability

Claims for compensation by the orderer, regardless of the legal basis for these, particularly on grounds of breach of obligations under the contractual relationship and tort, are excluded. This does not apply inasmuch as liability applies obligatorily under the Product Liability Act, in cases of wilful intent, gross negligence, because of injury to life, body or health or breach of material contractual obligations. The compensation for breach of material contractual obligations is however restricted to foreseeable losses arising from the type of contract, provided no wilful intent or gross negligence is involved or liability arises for injury to life, body or health. No change in the burden of proof to the detriment of the orderer is involved in the foregoing regulation. In so far as the orderer is entitled to claims for compensation under this article, these lapse with the expiry of the statutory period for quality defect claims under Article VIII, Section 1.

XI. Jurisdiction

1. If the orderer is a dealer, the sole place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is that of the supplier's head office or branch.
2. For contractual relationships German substantive law applies, under suspension of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

XII. Legal validity of the contract

The contract remains valid in its other constituent parts even if individual points are legally invalid. This does not apply if adhering to the contract would constitute unacceptable hardship for one of the parties.

Special Provisions for Software Delivered at the Same Time or Separately

Scope of Application:

This software clause applies exclusively to standard software which is transferred together with other deliveries or as part of a delivery. The General Terms and Conditions of Delivery and Payment only apply if the following provisions are not deviated from in any way. The supplier does not assume any obligation to provide software services. These require a separate agreement.

Right of Use

1. The customer may use the program concurrently on one appliance (individual licence) only if the customer is not granted the multiple licence. The same applies when using the software on networks even if in this instance the software is not duplicated. Use is understood to include any permanent or temporary, total or partial duplications of the program as a result of storing, loading, running or displaying for the purposes of executing the program and processing the data contained in the program. The customer is not authorised to duplicate the user handbook.

- 1.1 The customer may only change or revise the program to the extent that, when using it in accordance with the provisions, this is required for it to be connected to other programs or for correcting errors. Retranslations of the program code (decompilation) which go beyond the statutory provisions are not allowed. The customer must not remove alphanumeric and other answer-back codes from the data carriers and must transfer them unchanged to any back-up copy.
- 1.2 The customer may only use the software with the hardware referred to in the contractual documents and in the absence of such a referral only with the accompanying hardware which is supplied with the software. Using the software with another appliance requires the express written agreement of the supplier and, when using the software, gives rise to a reasonable additional payment; this does not apply if and so long as the customer temporarily uses a replacement appliance within the agreed scope on account of a defect in the agreed appliance.
- 1.3 The customer may produce a back-up copy of the software if this is required to safeguard future use. Moreover, the customer may only duplicate the software within the context of a multiple licence.
- 1.4 The prerequisite for a multiple licence is an express written confirmation from the supplier as regards the number of permissible software duplications which the customer may make and the number of appliances or workplaces where the software may be used.

2. Transfer of Risks

When transferring the software by means of electronic communications media (for example via the Internet), the risk is transferred when the software leaves the supplier's sphere of influence (for example, when downloaded).

3. Passing on the Program Package

- 3.1 The customer, to whom the software is not transferred for the purposes of commercial resale, may pass on to a third party the right to use the software but only together with the appliance which he has acquired from the supplier together with the software. He must however also contractually impose on this third party the obligations vis-à-vis us which ensue from the transfer of the program package. The right to pass on does not extend to the passing on of copies and partial copies or amended or revised versions or copies and partial copies made of these. The customer is not entitled to grant sub-licences. If the customer transfers the software to a third party, then the customer is responsible for the compliance with any possible export requirements and in this respect he must release the supplier from any obligations.
- 3.2 When the program package is passed on, the right to use it passes over to the third party who then contractually replaces the customer whose right of use expires at the same time.
- 3.3 Multiple licenses may only be transferred to a third party if they are transferred in total together with all the appliances on which the software may be used.
- 3.4 When passing on the program package, the customer must immediately and completely destroy all copies, partial copies and also all back-up copies as well as amended or revised versions of the program and copies, partial copies and back-up copies made of these.
- 3.5 Hiring out the program package or parts thereof is not allowed.

4. Warranty

- 4.1 The customer should note that it is not possible to develop computer programs in such a way that they are faultless when used under any circumstances.

- 4.2 We assure that the transferred program will carry out the agreed functions and will demonstrate the agreed qualities and attributes. The prerequisite for any warranty is that the program is used in accordance with the contract.
- 4.3 We also assure that the original program is duly recorded on a tested data carrier, with the exception of preinstalled programs.
- 4.4 You must inform us immediately in writing of any program defects. The defect must be described as precisely and in as much detail as possible. Only deviations from the specification which are proven and reproducible by the customer are deemed to be material defects in the software. The warranty always covers twelve months. The period starts on the date that the risk is transferred over.
- 4.5 If the software is showing a material defect, the supplier must first of all be given the opportunity to subsequently comply with the warranty agreement in respect of reparations within a reasonable period of time, at least however within four weeks. The supplier has the right to choose between the types of subsequent compliance. We do not refund costs for the removal of a defect by the buyer or a third party. Material defect claims do not exist
 - if the deviation from the agreed condition is only trivial,
 - if use is only impaired in a minor way,
 - in respect of damages which ensue from incorrect or negligent handling,
 - in respect of damages which ensue due to particular external influences which are not provided for under the contract,
 - for changes made by the customer or a third party and the ensuing consequences,
 - in respect of software expanded by the customer or a third party via an interface not provided by the supplier, so that the transferred software goes with the data processing environment used by the customer.
- 4.6 This is the scope of our warranty. In particular we do not assure that the transferred program corresponds to the special requirements of the customer or user and we also do not provide a warranty for changed or revised versions of the program unless the customer proves that the defects are not in any way connected with the changes or revision. The customer is solely responsible for the selection, installation and use of the programs and for the intended results.

5. The Customer's Additional Duties to Cooperate and Liability

The customer must take any reasonable and necessary action in order to prevent or to limit damages caused by the software. In particular the customer must ensure that the programs and data are backed up regularly. If the customer culpably violates this obligation, the supplier is not liable for any ensuing consequences and in particular not for the replacement of lost or damaged data or programs. An amendment to the burden of proof does not affect the regulation.

6. Compensation for Damages

- 6.1 Any additional claims by the customer or third party, especially any claims for compensation for damages, particularly for indirect or consequential damages, are ruled out unless the injured party proves that the damage was caused by us intentionally or as a result of gross negligence; we are however even then not liable for indirect damages.
- 6.2 In addition, our General Terms and Conditions of Business apply accordingly.

7. Additional Rights

- 7.1 All additional rights are reserved by us. The rights of the customer to use his own programs which are developed or operated when using the transferred program in accordance with the provisions are not affected by this and his rights to use any other results of his work which he achieves through using the transferred program are also not affected by this.

Export clause

Shipments and services (the fulfilment of contract) shall be under the proviso that fulfilment is not being restricted by any national or international regulations, particularly export control regulations and embargoes or any other restrictions. The contract partners shall obligate themselves to provide all information and documentation needed for the export/ domestic shipment/ import. Delays caused by export checks or licensing procedures shall override any lead times or deadlines stipulated. If any required licenses for certain items cannot be obtained, the contract shall be considered as not concluded regarding the items in question; because of this and of above mentioned transgression of deadlines, any claims for damages shall be excluded.

Load-securing

We hereby point out that with pick-ups the transport company you have ordered is obliged to comply with the legal laws and provisions for load securing. This applies to both goods already loaded by the freight carrier and goods provided by us to be picked up.

In case there are any deficiencies or shortcomings with the load securing these must be eliminated prior to loading and securing of our goods. If this is not complied with we shall deny shipping the goods!