

## General Terms and Conditions of Sale for Domestic and Foreign Transactions

### I. Quotations and conclusion of agreement; definition of goods and/or services supplied

1. Quotations of Galenuswerk Rees GmbH (hereinafter referred to as the "Supplier"), as well as the acceptance of orders and the delivery of all goods and services by the Supplier, are subject exclusively to the following **"General Terms and Conditions of Sale"**. Standard terms and conditions of the Customer are hereby expressly excluded; standard terms and conditions of the Customer shall not bind the Supplier, even if at the time of the conclusion of a contract the Supplier does not object to the inclusion of such terms again. These General Terms and Conditions of Sale shall also apply to all future transactions between the parties and no further reference to these General Terms and Conditions of Sale shall be required for them to be included in the contracts. They shall likewise apply to subsequent agreements, even if not referred to specifically by the Supplier. This applies particularly to those instances where the Supplier unreservedly authorises the delivery of goods and/or services to the Customer while being aware of terms and conditions of the Customer that might conflict with or contradict any part of these General Terms and Conditions of Sale.
2. All quotations issued by the Supplier are provisional and subject to written order confirmation of the Supplier, unless otherwise agreed in writing.
3. All agreements, including those made with the Supplier's representatives, require written confirmation from the Supplier in order to be valid. All amendments, additions and/or ancillary agreements require written confirmation to become effective; with this stipulation also applying to any exception to this requirement of the written form. Written confirmation can also be in the form of a fax or e-mail. No verbal collateral agreements have been made at the time of the conclusion of the contract in which these General Terms and Conditions of Sale are incorporated.
4. The Incoterms valid at the time of the conclusion of a contact shall be used to interpret international standard commercial terms, provided they do not deviate from these General Terms and Conditions of Sale.
5. The following items shall not be legally binding in any way: advertising statements, and/or documents accompanying the quotation, especially pictures, drawings, weights, dimensions, performance data, technical descriptions and data sheets, as well as the specifications and technical descriptions contained in the respective product information brochures or advertising material. They only form part of the agreement if they have been expressly incorporated by the parties. They do not represent agreed qualities nor do they constitute a guarantee of any kind regarding the nature or durability of the items delivered by the Supplier, unless otherwise expressly agreed to. All guarantee liabilities assumed by the Supplier are subject to express written agreement with the Customer. The Supplier will provide consulting services only according to a written agreement.
6. The Supplier may change the design, conception or form of the items delivered, and reserves the right to amend the items supplied, their format and the scope of delivery during the delivery period, provided that such changes do not significantly change the items delivered or result in unreasonable consequences for the Customer. The Supplier expressly reserves the right to make reasonable changes as a result of advances in technology and/or to improve the items delivered.

### II. Scope of the Supplier's obligation to deliver

1. The scope of Supplier's obligation to deliver is defined in its written quotation. If the order of the Customer does not correspond to Supplier's written quotation, Supplier's confirmation of the order shall be binding. This does not affect any subsequent changes made and agreed to in writing.
2. The following items are not supplied as part of the delivery, unless clearly identified as such in the order confirmation: onsite excavation or construction work, erection of structural items or scaffolding, formwork to produce supports or anchor points, brick-built anchoring points, cantilever reinforcement, railings, pipe clamps; other preliminary work or the supply of special devices, tools or items such as walling materials, outlet conduits, scaffolding, fastening items (if related to the building); as well as power and utility hook-ups and the corresponding connection conduits between individual items of equipment.  
If the floor is to be laid at a later date, the Customer shall be responsible for levelling the surface, establishing the height of the foundations and obtaining the required materials.
3. Machines, switchgear cabinets and weighing devices are to be supplied with a topcoat finish; other items are to be supplied with a covering undercoating.
4. The supplied equipment and machines are equipped with protection and safety devices complying with general provisions currently in force in the Federal Republic of Germany. The Customer is responsible for verifying that all devices and machines supplied conform to the local regulations of the place of final use, and shall inform the Supplier of such in a timely fashion to allow these factors to be taken into account in the quotation. Subsequent requests by the Customer of changes and/or additions require additional payment and are subject to being technically feasible.

The Customer is also solely responsible for ensuring that the emission values stated in the quotation (particularly those relating to noise, dust and odours) satisfy local requirements if the machines supplied are to be used at a site located outside the Federal Republic of Germany. If modifications subsequently prove necessary, such changes require additional payment and are subject to being technically feasible.

5. The Supplier will bill separately for any installation or initial start-up-related work carried out in addition to the delivery of the machine itself. The special installation conditions of the Supplier shall apply in all such cases.

6. The Supplier retains all rights of ownership, copyright and exploitation in relation to quotations, drawings and other documentation provided to the Customer. These items shall not be disclosed to third parties. If no order is placed on the basis of the quotation, all drawings and other documents provided with or connected to the quotation shall be returned to the Supplier on demand and without delay.

### III. Software and software-related products

If the items supplied are to include software or software-related products (hereinafter both referred to as "**software**"), the following provisions shall apply:

1. The provisions in Sec. III. cover both the system software of the operating system and the application programmes for the solving of specific operational tasks, including the source- and machine-programming code and all manufacturer and user documentation designed to aid in the understanding and/or operation of the programme in question. These provisions apply in particular to descriptions of likely problems, system-analysis issues, operating instructions, dataflow and programme flow charts, troubleshooting help, etc. These provisions shall apply independently of the programming language or type of software being used, whether supplied as machine code, or on any kind of data-storage device (e.g. floppy disk, magnetic tape, saved to hard disk, working memory, compact disk, disks of other type, microprocessors, etc.).
2. The software included with the delivered items has been developed in-house by the Supplier, or on behalf of the Supplier, or is supplied on the basis of a licence agreement between the Supplier and a third party, covering the commercial use and distribution of such software. Programmes and data designed for the computer-controlled automatic operation of the machines and equipment supplied are in part subject to Sec. 2 para. 1 of the German Copyright Law (*Urhebergesetz*). The software and the accompanying documentation have been developed by or for the Supplier, or by a licensor at considerable expense in terms of both cost and effort. They are not supplied as public-domain material or shareware, but represent business and commercial secrets that have been entrusted to the Customer, who shall maintain their confidentiality.

3. The Supplier grants the Customer an ordinary, non-exclusive licence to use the software. This licence is restricted to allow operation only of those machines or items of equipment with which the software is supplied. The validity of the licence is limited to the service life of the machine. The software may not be sublicensed or otherwise transferred to any third party without the express written consent of the Supplier. If the supplied machine is sold or otherwise disposed of to a third party, the Supplier will only approve such a transaction if the buyer undertakes, without reservation, to be legally bound to honour all obligations arising from these conditions of use of the software. In such case the Customer shall hand over to the buyer all software, with the Customer undertaking not to retain copies of any kind.

4. The Customer shall keep the software as described in Sec. 1. confidential, and shall destroy or delete the software when the supplied machine is eventually decommissioned. In order to keep the software confidential, the Customer shall restrict access to the software to only those employees who are required to use it, and shall ensure that such employees are of trustworthy character and undertake individually to keep the software confidential. The Customer shall implement appropriate measures to prevent third-party access to any computer or data-retrieval system on which the software is installed.

5. The Customer shall to refrain from:
  - copying or distributing the software in any way or form,
  - reverse-engineering or deciphering the underlying source code of any part of the software, and/or from any other unauthorised revealing of its content,
  - selling, renting or licensing the software, or transferring it in any way or form, to a third party, and/or from making unauthorised copies, or using a copy of the software to control a machine with information-processing capabilities other than the machine provided by the Supplier to run the programme in question.

Amendments to the software on the part of the Customer, even if carried out for the purpose of legitimate adaptation, require the Supplier's express prior written consent.

6. The Customer's confidentiality obligations and its obligation to prevent the unauthorised transfer, duplication, distribution, manipulation and unauthorised use of the software as defined above continue to stay in force even after the expiry of the respective agreement between the

parties and after the eventual decommissioning of the machine. These obligations only end upon the expiry of the protected intangible rights as defined in Sec. III. of these General Terms and Conditions of Sale, or on the occasion of the concerned data passing into the public domain.

#### IV. Prices

1. The indicated prices apply, unless otherwise agreed, to the Supplier's delivery of the ordered items ex-works (EXW), and especially exclude packaging, shipping, freight, and setting-up costs.  
The value-added tax applicable on the day of delivery shall be added to the price.
2. Prices are based on the production costs applicable at the moment of the respective order confirmation. The Supplier is permitted to change the agreed upon prices of the goods if more than two months elapse between the conclusion of the contract and the delivery date (for consumers: four months) and the production costs of the Supplier are increased due changes in taxation, or due to changes of the prices for raw materials, auxiliary materials, energy, freight, or wages. Under these circumstances the Supplier shall be entitled to reasonably (Sec. 315 German Civil Code) increase or decrease the price owed by the Customer in accordance with the changes of its cost factors. The reasons for any price adjustment shall be demonstrated to the Customer by the Supplier upon request. The Customer shall also be permitted to increase the prices in the event of the imposition of legal requirements on the Supplier imposing additional obligations on the Supplier, causing the production costs of the items to be increased. The price adjustment shall come into effect upon Customer's receipt of a respective notification of the price change issued by the Supplier. Price increases in accordance with Sec. IV.2 Sentence 1 and 2 do not entitle the Customer to cancel an order.
3. If, under exceptional circumstances, the Supplier should assume freight costs, export/import duties, customs charges, or similar costs at fixed rates, the Customer shall be liable to compensate the Supplier for any cost increase occurring prior to delivery.
4. The cost of packing shall be quoted at cost price. Packaging materials returned postage unpaid cannot be accepted.
5. Prices are quoted on the assumption that power is supplied at 3 x 220, 3 x 400 or 3 x 500 Volt (V) at 50 Hertz (Hz).

#### V. Terms of payment

1. Unless there is a separate agreement, strictly net cash payment is to be made without deduction as follows
  - o 1/3 payment upon the issue of an order and receipt of confirmation of the same,
  - o 1/3 upon completion of an order and notification of readiness for dispatch,
  - o the remainder 30 days after delivery, however, no later than 60 days after notification of readiness for dispatch.
2. Payment by eligible bill of exchange or cheque is subject to special agreement being reached first. No liability is accepted for the timely presentation of bills or charges resulting from their protest. Discount charges, etc. – at least corresponding to the fees charged by private banks – are to be borne by the Customer.  
If payment by way of bills of exchange and/or cheques is accepted by the Supplier, the Customer's payment obligation shall only be discharged if the respective cash value of the bills of exchange and/or cheques is irrevocably deposited in Supplier's accounts, and on the date on which the Supplier gains full access to the funds concerned.
3. In the event of a delay in payment, a Customer, who is not a consumer (Sec. 13 German Civil Code), shall be charged interest on arrears at the rate of 8 percent points above the basic interest rate (Basiszinssatz).
4. In the event of failure on the part of the Customer to settle an invoice, or to pay by its corresponding due date, or if the Customer's financial status is downgraded, or the Supplier obtains unfavourable information on the Customer after the conclusion of the agreement that gives rise to doubts about the Customer's creditworthiness or ability to pay, the Supplier shall be entitled to demand the immediate payment of any remaining debt owed by the Customer, and to demand the advance payment, or a deposit, or immediate payment for completed shipments, as arising from this contractual relationship. This provision applies in particular if the Customer ceases to make payments, if cheques issued by the Customer cannot be cashed, if bills of exchange issued on the Customer's behalf are not honoured, if insolvency proceedings affecting the Customer's assets are instigated, or if an application to open insolvency proceedings affecting the Customer's assets has failed due to there being insufficient assets to recover.
5. If the Customer delays payment, the Supplier shall be entitled to withdraw from the contract after setting a reasonable payment deadline and its expiry without payment being made. After the withdrawal of the Supplier, the Customer shall be obliged to return the goods delivered. In addition to this, the Customer shall be obliged to compensate the Supplier for the loss in value of the delivered goods due to the Customer's use of the goods for their intended purpose. The compensation for the loss of value to be paid by the Customer shall be calculated on the basis of the agreed sale price including value-added tax (gross price). By taking into account the typical service life of the delivered goods - the remaining service life in the case of used goods - their gross price shall be depreciated over time by deducting amounts for wear and tear in regular yearly intervals until the gross price is completely written off. Where the usage commences or ends during the year, only the pro rata depreciation amount for the partial first or last year shall be taken into account, whereby, the month of commencement or termination shall only be included if the Customer has already used the item delivered by the 15th of the month, or has not ceased to use it prior to the 16th of the final month of operation. The total depreciation amount (for the time of Customer's use) shall constitute the sum owed by the Customer to the

Supplier. Sec. X.5 shall apply with regard to Costumer's obligation to return the delivered goods.

6. If the conditions for withdrawal from the contract according to Sec. V.5 Sentence 1 are given, the Supplier shall be entitled to demand compensation from the Customer not only for the depreciated value of the goods as per Sec. V.5, but also for other damages. Without affecting the possibility of claiming higher damages, the Supplier shall be entitled to demand 25 % of the net sale price from the Customer as a lump-sum compensation for damages. The Customer has the right to prove lower damages.
7. The Customer shall have rights of retention or set-off only if his counter claims have been finally determined by a court of law or are not objected to by the Supplier. The entitlement to withhold payment shall furthermore only be valid if the recognised counterclaim refers to the same contractual relationship on which the Supplier's original claim is based.
8. If an agreement between the Supplier and the Customer is cancelled by both parties at Customer's request, the Customer shall reimburse the Supplier for all costs incurred up to that moment, including a reasonable sum to compensate lost profits. The Supplier is obliged to furnish proof, in an adequate form, of its entitlement in this respect.

#### VI. Reservation of title

1. All deliveries effected by the Supplier are subject to reservation of title under the terms of Sec. 449 of the German Civil Code, with the following additional provisos:  
All delivered goods shall remain the property of the Supplier until such time as all Supplier's payment claims – regardless of when made or on what legal basis – have been fully satisfied, even if payments have been made for specifically designated claims by the Customer. If settlement is made on an instalment basis, the reservation of title shall provide security for the balance still due to the Supplier.  
The reservation of title also applies specifically to any claims that might be made by the Supplier with respect to installations, repairs, the supply of spares, accessories or consumables, and/or costs arising from setup work or insurance payments.
2. No supplied item may be resold or otherwise disposed of, hypothecated in any way, or used as collateral until full legal title has been transferred to the Customer.
3. The Customer shall inform the Supplier of any event of seizure, or of any other action by a third party that may affect the delivered goods. The Customer shall compensate the Supplier for any costs resulting from an intervention against such actions, if the Supplier transfers his claims for re-imbursement against third parties to the Customer.
4. The Customer undertakes to handle with due care the delivered goods. On demand, the Customer shall – at his own expense and to the Supplier's full satisfaction – insure the delivered goods against theft, fire and water damage at their full replacement value, and provide the Supplier with written proof to that effect. The Customer shall be liable for all costs arising from any maintenance or inspection work that may be required, and for carrying out such operations at the stipulated intervals.
5. Supplier or Supplier's representative shall be afforded full access to the site of installation until all claims arising from the contractual relationship have been fulfilled.
6. If the Customer is in breach of contract, especially in the event of a delay in payment, the Supplier shall be entitled - without this affecting any further (damage compensation) claims on the part of the Supplier - to withdraw from the contract and repossess the goods delivered. The Customer shall be obliged to facilitate such repossession. The Supplier shall be permitted to realise the value of the goods after repossessing them. The proceeds of such realisation shall - after deducting reasonable realisation expenses - be offset against the financial obligations of the Customer.
7. If the supplied items are located in a jurisdiction in which the above mentioned concept of reservation of title is not recognised, the local legislation and/or legal concept that in terms of scope and spirit most closely corresponds to this concept of reservation of legal title shall apply. In the event of the Customer's collaboration being necessary for the establishment, execution and/or maintenance of this concept, the Customer, at the Supplier's request, shall take all necessary steps, at his own cost, to ensure that this concept is established, executed and maintained.
8. The Supplier shall be obliged, at the Customer's request, to release sureties insofar as, and to the extent that the sum of all sureties held by the Supplier exceeds by more than 10 % the amount of all claims of the Supplier against the Customer.

#### VII. Delivery period and possible delays

1. The delivery period shall be as agreed. It begins – unless there is an agreement to the contrary – on the date of Supplier's order confirmation, but not before both parties have resolved any relevant administrative and technical questions affecting the delivery. It is also dependent on the Customer having fulfilled all its obligations, such as the obtaining of any official certificates or permits that may be required, or the making of any outstanding payment. The delivery period shall be reasonably extended in the event of any failure to fulfil these requirements. The delivery period shall also be extended if the Customer subsequently makes substantial changes to the original order. The delivery period shall begin, regardless of any obligation of the Customer to cooperate, with the receipt by the Customer of the order confirmation, insofar as the Supplier is responsible for the delay incurred.
2. Observance of the delivery period is subject to correct and punctual delivery on the part of original suppliers. The Supplier will inform the Customer as soon as possible of any delays that might occur.
3. The delivery schedule shall be regarded as fulfilled if the supplied goods leave the Supplier's plant by the stipulated expiry date. If it is agreed that the Customer, or a carrier designated by the Customer, is to pick up the supplied goods, the delivery schedule shall be regarded as fulfilled if the Customer has been informed of their readiness for dispatch by the stipulated expiry date. If formal acceptance is

- required, the date on which it takes place – unless there are justified grounds for refusal to do so – shall be a determinant for fulfilment of the delivery schedule. If acceptance is delayed by the Customer, the Supplier's notification of readiness for acceptance shall be the determining factor.
4. If shipment, or the acceptance of the supplied goods, is delayed for reasons attributable to the Customer, the Supplier shall be entitled to bill the Supplier – starting one month after notification of readiness for shipment or acceptance – for the costs incurred as a result of this delay.
  5. In the event of force majeure or other unforeseeable and/or extraordinary circumstances not attributable to the Supplier, such as downtime due to fire, flood or similar factors, malfunctioning production equipment or machines, failure on the part of original suppliers to fulfil delivery dates or to deliver at all, or interruptions in production due to lack of raw materials, adequate power supply or available staff, strike, lockout, difficulties in ensuring transportation, traffic congestion, or action by official bodies, the Supplier shall be entitled to delay delivery or fulfilment of the agreement for the duration of such circumstances, plus an adequate recovery period, if such circumstances prevent the Supplier, through no fault of its own, from fulfilling its obligations with respect to the agreement. If the delivery or performance is thereby delayed by more than three months, both the Supplier and the Customer shall be entitled to withdraw from the contract in relation to the delivery quantities or performances affected by the delay, with any claims for compensation of damages being excluded.
  6. The Supplier shall be entitled to carry out partial deliveries of the goods and services concerned within the agreed delivery schedule, if this is reasonable for the Customer.
  7. In the event of culpable delay of delivery or production, the Supplier shall only be liable to the Customer within the boundaries of a lump-sum compensation for delay of 0.3 % of the net purchase price for each full week of the delay, at the most however of 5 % of the agreed purchase price of the part of the total delivery affected by the delay, provided the Customer has suffered loss or damage of at least this level. This shall not apply where the Supplier is liable under mandatory law in cases of intent, gross negligence or injury to life, limb or health. The Supplier expressly reserves the right to ascertain whether such a delay has actually resulted in the Customer incurring either no loss whatsoever or a considerably smaller loss than that giving rise to aforementioned lump-sum payment.
  8. The Supplier's liability for payment of damages in each such case of delay shall be limited as stipulated in Sec. XI.
- VIII. Transfer of risk**
1. Delivery terms are ex-works (EXW), unless otherwise expressly agreed to in writing between the Supplier and Customer. Having been made available for dispatch, the risk of accidental loss or deterioration of the items being supplied shall pass to the Customer once the Customer has been notified of the availability for collection or shipment. In all other cases, the risk of accidental loss or deterioration of the items being supplied shall pass to the Customer at the moment of handover to the carrier. The risk of accidental loss or deterioration of the items being supplied shall likewise pass to the Customer in the case of partial shipments, or if the Supplier, as an exception, has agreed to assume further obligations, such as bearing shipment costs to the Customer's premises. If shipment is delayed for reasons attributable to the Customer, then risk shall pass to the Customer once the Supplier has notified the Customer that the goods are ready for shipment.
  2. The items supplied, even if they display minor imperfections or faults, must be accepted by the Customer, notwithstanding the latter's rights as defined in Sec. X.
- IX. Packaging and shipment; set-up**
1. Packaging and shipment are provided at the Supplier's complete discretion and at the Customer's expense. The Supplier shall be free to select the packaging, shipping route and the means of transportation, in the absence of any special agreement to that effect.
  2. The Supplier shall be entitled, at the Customer's expense, to insure each shipment against breakage, damage in transit, fire, theft and water damage.
  3. The Supplier's special and separate installation conditions shall apply if the Supplier has assumed additional responsibility for the assembly or setup of the machines delivered.
- X. Customer's claims in case of defects**
- Defects as to quality**
1. The Customer shall only be entitled to bring claims for defects as to quality (warranty claims) if he has duly fulfilled his inspection and notification obligations according to Sec. 377 German Commercial Code. Obvious defects must be reported to the Supplier by the Customer immediately in writing, at the latest, however, within 7 working days of the delivery of the goods. Hidden defects must be reported to the Supplier in writing immediately after their discovery, at the latest, however, within 7 working days of their discovery. Further, hidden defects must be reported in writing at the latest within 12 months of the passage of risk. The defective goods shall be made available to the Supplier upon request for purposes of inspection. The inspection and notification obligations mentioned in Sentences 1 and 2 shall not apply to consumers (Sec. 13 German Civil Code).
  2. If used goods or goods stipulated as downgraded by the parties are delivered, and where a defect only results in a minor reduction in value or utility of the delivered goods, the Customer shall not be entitled to bring warranty claims, unless the Customer is a consumer (Sec. 13 German Civil Code). The same shall apply - independently of whether the Customer is a consumer - where deviations, especially of weights, measures, performance data or colours, are within typical industry ranges of tolerance. Likewise excluded are warranty claims of the Customer - independently of whether the Customer is a consumer - where damage to the goods delivered or to other property of the Customer is attributable to improper use of the goods, incorrect assembly or commissioning by the Customer or a third party, natural wear and tear, improper or negligent handling of the goods, or to the use of unsuitable operating supplies or replacement materials, defective construction work that is not the responsibility of the Supplier, chemical, electrochemical or electrical influences that are not the responsibility of the Supplier.
  3. If the delivered goods show defects as to quality (and the other conditions mentioned above are met), the Supplier shall, at its own discretion, repair the defect in question or deliver a free replacement. If the item in question is to be repaired, the Supplier shall bear all expenses resulting from such operation, particularly transportation, labour and material costs, insofar as these costs are not increased by the purchased item or items meanwhile being transported by the Customer to a location other than the place of performance. Items or components replaced by the Supplier under the terms of these conditions become the latter's property.
  4. The Customer must afford the Supplier the time and opportunity required to carry out the repair or rectify the defect in question. The Supplier shall otherwise be exempted from any liability for resulting consequences.
  5. In the event of withdrawal from the contract by the Customer, the goods delivered shall be returned to the Supplier by the Customer at the place of performance in accordance with Sec. XIII.1. If the goods delivered are located at a location other than the place of performance, transportation from this location to the place of performance shall be carried out by the Customer at its own expense and risk.
  6. The stipulations of Sec. X.5 shall not apply to consumers (Sec. 13 German Civil Code).
  7. If the Supplier is unprepared or unable to rectify the defect as to quality, particularly if this results in inordinate delays for reasons attributable to the Supplier, or if Supplier's attempts to rectify the defect as to quality fail or if such attempts could not be reasonably expected to be accepted by the Customer, the Customer shall be entitled, at its own discretion, to withdraw from the agreement or demand a reduction of the purchase price. If there is only a minor defect, the Customer shall be entitled solely to a reduction of the purchase price. If the Customer has suffered a loss due to defects in the items delivered by the Supplier, or has incurred unnecessary expenses, the Supplier shall be liable under the terms of Sec. XI.
  8. The Supplier shall accept no liability whatsoever for the consequences of unauthorised repairs carried out by the Customer or a third party acting on the Customer's instructions. This condition shall also apply to modifications to the delivered goods, carried out without the Supplier's prior approval, which result in loss or damage being incurred.
- Defects of title**
9. In the event that the operation of the delivered goods infringes on intellectual property rights or copyrights, the Supplier shall either provide the Customer with the right to further use the goods at its own expense, or shall modify the delivered goods in a way, acceptable to the Customer, that avoids any such infringement in the future. If this cannot be done at reasonable expense and/or within a reasonable time, the Customer and Supplier shall be entitled to withdraw from this agreement. The Supplier may only withdraw from the agreement under these circumstances if it is not responsible for infringing third party rights. The Supplier shall hold the Customer harmless of any uncontested claims or of claims of the owner of the affected intellectual property rights finally determined by a court of law. It shall be a matter of the Customer to claim for any damages arising; the limitations of Sec. XI. shall apply to any such damage claims.
  10. The list of Supplier's obligations set forth in Sec. X.9 (above), safe for the provisions set out in Sec. XI, in the case of the infringement of intellectual property rights or copyrights is final. They shall only arise:
    - o if the Customer informs the Supplier without delay of any legal action involving the infringement of intellectual property rights or copyrights,
    - o if the Customer reasonably assists the Supplier in defending such claims, and/or if the Customer enables the Supplier to carry out the modifications mentioned in Sec. X.9, (above),
    - o if the Supplier is reserved the right to take any defence measures, including out-of-court settlements,
    - o if the defect of title is not due to an instruction or other action attributable to the Customer,
    - o if the infringement was not caused by unauthorised modifications to, or the non-contractual use of the object of the agreement on the part of the Customer.
- XI. Liability**
1. The Supplier shall only be liable to the Customer or third parties for damage claims or unnecessary expenses, for whatever legal ground, if such damage and/or unnecessary expenses
    - a) were caused by the Supplier or the Supplier's vicarious agents through a culpable breach of an obligation, the fulfilment of which is essential for the carrying out of the contract and which the Customer would ordinarily be entitled to depend upon ("material contractual obligation"), or
    - b) can be attributed to gross negligence or wilful infringement of a contractual obligation on the part of the Supplier or his vicarious agents.
- Notwithstanding Sec. XI. 1. a), the Supplier shall be liable for damages and/or unnecessary expenses that arise from providing consultation services and/or information that is not to be billed separately only in the event of gross negligence or wilful infringement of a contractual obligation, insofar as such an infringement does not constitute a defect as to quality with respect to the goods delivered by the Supplier.
2. If the Supplier is liable under the terms of Sec. XI. 1. a) for the infringement of a material contractual obligation without acting with

gross negligence or wilfully, Supplier's liability shall be limited to the foreseeable damage typical in such situation. The Supplier shall not in this case be liable for any lost profits of the Customer, nor for non-foreseeable, indirect or consequential damages. The limitation of liability according to sentence 1 and 2 applies mutatis mutandis to claims arising from wilful or gross negligent conduct of the Supplier's employees or representatives, insofar as such persons are not members of the Supplier's board of directors or management staff.

3. The limitations of liability described in Sec. XI. 1. and 2. (above) shall not apply if the liability in question is arising under the provisions of the Product Liability Act (*Produkthaftungsgesetz*), or if claims are brought against the Supplier for the injury of life, limb, or health. In the event of items delivered by the Supplier not possessing a given guaranteed characteristic, the Supplier shall only be liable for losses directly resulting from the failure to supply this specific characteristic or feature.
4. Any liability in excess of the liability stipulated in the aforementioned provisions of Sec. XI. 1.-3. is hereby expressly excluded, irrespective of the legal nature of such claim. This shall specifically apply to compensation claims arising from negligence in the conclusion of the agreement (*culpa in contrahendo*), (positive) breach of contract (*positive Vertragsverletzung*) or in tort.
5. Where the liability of the Supplier towards the Customer or third parties is excluded or limited under Section XI. 1.-4., this limitation of liability shall also apply with regard to the personal liability of employees, labourers, co-workers, representatives and vicarious agents of the Supplier.

## XII. Limitation of Actions

1. Claims of the Customer relating to defects of the goods delivered by the Supplier, or to a breach of the Supplier's obligations under a service contract, including claims for compensation and for unnecessary expenses, are subject to a limitation period of one year, unless otherwise stipulated in Sec. XII. 2. and 3. The limitation period for Customer claims of the Customer in the meaning of clause 1 shall start to run
  - a) from the date of delivery in case of delivery contracts,
  - b) from the date of acceptance, in case of contracts including erection and/or start up obligations, or
  - c) from the date stipulated by law, in all other cases.
2. In the event of defects being detected in a constructed building, or if components designed to be used for buildings have caused a defect in buildings, the limitation period for Customer claims shall be five years, running from the moment of delivery (in the cases cited in Sec. XII. 1a) or acceptance (in the cases cited in Sec. XII. 1b).
3. If the Supplier has provided consulting services and/or information that is to be billed for separately, or provided consulting services or information giving rise to a defect as to quality in the items delivered, claims against the Supplier are subject to a limitation period of one year, running from the moment stipulated by law. If the consultation services or information provided give rise to a defect as to quality in the items delivered along with the said advice or information, the applicable limitation period shall be determined by the provisions of Sec. XII. 1., 2. and 4.
4. The provisions in Sec. XII. 1. - 4. do not apply to claims arising from injury to life, limb or health, nor do they apply to claims brought under the Product Liability Act (*Produkthaftungsgesetz*) nor to claims arising from a defective title of the goods delivered by the Supplier, which invoke a third-party's right *in rem* and would result in that third party's claim to have the delivered goods handed over to him. They furthermore do not apply to the limitation period of Customer's claims relating to a fraudulent concealment of defects in the items or services delivered by the Supplier. The statutory provisions shall apply to the cases described in Sec. XII.4.

## XIII. Other terms and conditions

1. The registered seat of the Supplier, as entered in the Commercial Register, shall by the place of performance and the exclusive place of jurisdiction for all disputes arising out of or in connection with the contractual relationships between the Supplier and the Customer, provided that the Customer is a merchant (*Kaufmann*), a legal entity under public law or a special fund under public law, and where no mandatory statutory provisions require otherwise. The Supplier shall, however, also be entitled to bring legal actions in the courts having jurisdiction at the registered head office of the Customer.
2. This agreement and the legal relations amongst the parties shall be governed by and construed in accordance with the laws of the Federal Republic of Germany, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
3. In the case that the parties have agreed to settle their controversies by arbitration, the following shall apply: The arbitration tribunal concerned shall be convened in accordance with ICC rules (International Chamber of Commerce, Paris). It shall consist of three members. Proceedings shall be held in English. The seat of the arbitration tribunal shall be Zurich (Switzerland).
4. The Customer may not, without the express agreement of the Supplier, transfer or assign, in whole or in part, to any third party its rights or claims against the Supplier, particularly to those rights or claims resulting from the contractual relationship between the Supplier and the Customer, including for example rights arising from defects. The provisions of Sec. 354 of the German Commercial Code (HGB) remain unaffected in this case.