

General Term and Conditions of Sale of JW Verpackungstechnik GmbH, Georgsmarienhütte

§ 1 Scope

- 1.1 Our terms and conditions of sale apply exclusively; we do not recognise any conditions of the customer to the contrary or those which deviate from our conditions of sale except when we have specifically agreed in writing to their validity. Our conditions of sale apply even if we carry out a delivery to the customer without any reservation when we are aware of contrary conditions of the customer or those which deviate from our conditions of sale.
- 1.2 Our terms and conditions of sale apply solely to entrepreneurs as defined in § 310 BGB (German Civil Code).
- 1.3 Our terms and conditions of sale shall also apply in their respective version for all future business transactions of a similar type with the customer without any need for us to refer to them again in each individual case; we will inform the customer of any alterations at the latest upon conclusion of the respective contract.

§ 2 Offers - Prices – conditions of payment

- 2.1 Our offers are non-binding and subject to confirmation, unless where exceptionally a specific legal intention to be bound has arisen from the offer.
- 2.2 Our prices include additional statutory sales tax for delivery ex-works ("ex works" Incoterms 2010) Im Mündrup 2, 49124 Georgsmarienhütte. We are entitled to raise the agreed price if, between the award of the contract and delivery, the costs of raw materials, energy, wages and salaries, freight, customs duty, taxes etc. have increased and if as a result the cost of delivery has increased. The customer is to be informed in advance of any price increase: he can object to it within seven days after receiving notification of the price increase. In the event of such an objection we have a choice between withdrawing from the contract or delivering at the originally agreed price. We must inform the customer without delay of our decision. If we declare our withdrawal from the contract, all further claims of the customer are excluded.
- 2.3 Payments shall be made solely by bank transfer or by SEPA direct debits. Payment by bills of exchange or cheques will not be recognised as fulfilment of the liability to pay.
- 2.4 For payments under the SEPA direct debit process, the customer must provide us with a SEPA company mandate. The sum will be debited 10 days after the date of the invoice. The time limit for pre-notification will be reduced to 1 day. The customer ensures that sufficient funds are in the account. Costs arising from the non-transfer or back transfer of the amount debited are to be borne by the customer, unless the non-transfer or back transfer is caused by us.
- 2.5 It can be agreed between the contractual parties that the customer has to open a documentary credit via his bank (or another bank acceptable to us). In this case it is laid down that the opening of a documentary credit is carried out in accordance with the Uniform Customs and Practice for Documentary Credits, revision 2007, ICC-Publication No. 600 ("ERA").
- 2.6 The customer has the right of offsetting and retention only if and when his counterclaims have been stated legally binding, undisputed or recognised by our company, or when a consideration is involved which results from the contractual relationship, especially a counterclaim arising from a refusal of performance. The customer is entitled to exercise the right of retention only in the event that his counterclaim involves the same contractual relationship.
- 2.7 Subsequent amendments of, or additions to, the contract or major results therefrom will be set out in writing and confirmed by both parties. The customer has to reimburse expenses incurred and deliveries and services carried out in accordance with the agreement. At the request of the customer we will carry out subsequent alterations as long as this is possible without additional expense or causing delays to deadlines. In the event that the changes result in expenditure which exceeds the originally agreed expenditure and the originally agreed fee, we will inform the customer within 5 working days of the changes to cost, fees and deadlines. If the customer does not refuse the change within a further 5 working days or if no consensual settlement is reached in advance, then the change requested by the customer and the changed costs, fees and deadlines notified by us for this purpose are regarded as having been agreed.
- 2.8 In cases in which we perform services for which no fixed price has been agreed, we will calculate the price using the standard accounting rates valid at the time that the service was performed. Moreover, we can take into account all costs which arise including an appropriate surcharge. We will document the surcharge upon request.

§ 3 Delivery and performance

- 3.1 Compliance with all our obligations of delivery and fulfilment assumes the prompt and proper fulfilment of the customer's obligations and the clarification of all technical questions, especially the punctual provision of samples and test material in sufficient quantities.
- 3.2 Despatch of our products and goods is carried out by the least expensive means and at the risk and cost of the customer. Should the customer so wish, we will cover the delivery with a transportation insurance policy. The resulting costs are to be borne by the customer.
- 3.3 Partial deliveries are acceptable if:
- the customer can use the partial delivery within the scope of the contractual intended purpose,
 - delivery of the remainder of the goods ordered is ensured and
 - no major extra expense or additional costs result (unless we express our willingness to bear these costs).
- 3.4 Goods forming part of properly executed deliveries can only be taken back if we agree to the return, in which case the customer has to bear the costs of the return.
- 3.5 Force majeure, requirements by the authorities and other conditions for which we are not responsible release us for the duration of their effects from our supply/service performance obligations. This applies especially to disruption of transport and business, labour disputes, shortage of materials, the effects of fire, war or state of emergency. We are authorised to withdraw from the contract if the fulfilment of the contract is no longer reasonable for the reasons quoted. An unreasonable situation does not exist if the performance-inhibiting event caused by the reasons quoted exists but is foreseen as being of only a temporary nature. Claims for damages against us are excluded in these cases.
- 3.6.1 We are liable in the event of impossibility or delay in performance, where this is due to intent or gross negligence, including intent or gross negligence of our representatives or vicarious agents under statutory regulations. In cases of gross negligence our liability is however limited to typical to the nature of the contract and foreseeable damage.
- 3.6.2 In cases of slight negligence our liability because of impossibility of performance is limited to damage and refund of wasted expenditure is similarly limited to typical to the nature of the contract and foreseeable damage. Further claims of the customer because of impossibility of performance are excluded. The customer's right to withdraw from the contract remains unaffected.
- 3.6.3 Our liability because of delay in performing the service in cases of slight negligence will be limited to a total of 5% for compensation together with performing the service and for compensation instead of performing the service to a total of 5% of the value of the service. Further claims of the customer because of delay in performing the service are excluded – even after the expiry of a deadline for performance. These rules also apply to the refund of wasted expenditure.
- 3.6.4 The limitations under § 3.6 above do not apply where there is liability for wrongful death, personal injury or health impairment, or for the infringement of major contractual obligations. Under the term major contractual obligations are those, the fulfilment of which characterises the contract and on which the customer can rely. An amendment of the burden of proof to the disadvantage of the customer shall not be associated with this.

§ 4 Reservation of self-supply

We do not accept responsibility for the procurement risk. Where, despite the conclusion of an appropriate contract if purchase, we do not receive the delivery item and/or from the view point of essential parts of the delivery item do not fully receive the latter, we are entitled to withdraw from the contract with the customer. Our responsibility for intent and negligence remain unaffected. We will inform the customer without delay of the non-availability or the non-availability on time of the delivery item and, and, if we wish to withdraw, exercise the right to do so without delay. In the event of a withdrawal we will refund without delay any services already rendered by the customer.

§ 5 Due date – interest – consequences of default

- 5.1 Payment is due upon receipt of the invoice and the delivery or receipt of the goods. The customer is in default 14 days after the aforementioned due date the latest. In the event of default, interest is due to be paid to us at the rate laid down in legislation. Claims for compensation beyond this remain unaffected.
- 5.2 For as long as the customer is in default of payment, we are not obliged to make any further deliveries, irrespective of the legal basis on which our duty of delivery is based.

- 5.3 In the event that a major deterioration should occur in the customer's financial circumstances, especially if insolvency proceedings are requested, we can demand, irrespective of the due payment date, cash or other security for deliveries still to be made before the goods are delivered.
- 5.4 Where payments by instalments and/or payments on account have been agreed between the customer and ourselves, the following also applies: in the event that the customer falls totally or partly or into arrears by one instalment or one payment on account for longer than three days, then the remaining sum still unpaid becomes immediately and totally payable in one instalment.
- 5.5 In the event that the customer should be in default of acceptance on the due date, he must still pay the purchase price. We will undertake the storage of the goods in such cases at the customer's risk and expense.
- 5.6 In the event that security for the payment of the purchase price is provided by a bank or another third party, and delivery of the goods cannot be made for reasons beyond our control, we are authorised to demand payment of the remaining due purchase price from the bank or another third party against presentation of proof that the goods have been put in storage. Such storage of the goods takes place at the customer's risk and expense. The date on which the goods are placed in storage by us counts as the date of delivery. All delivery and other documents which have to be handed over by us in order to obtain payment from a bank or from another third party are to be passed to us without delay by the person(s) originating these documents.

§ 6 Reservation of title

- 6.1 We retain ownership of the items to be delivered until the fulfilment of all our claims against the customer resulting from the business relationship. In the event of behaviour contrary to the contract by the customer, we are entitled to withdraw from the contract after the fruitless expiry of a reasonable period of grace. After such a withdrawal, we have the right to demand return of the goods, to sell them elsewhere or to dispose of them in any other way.
- 6.2 The customer is obliged to treat the delivery goods in a careful way: he is especially obliged to insure these adequately at replacement value at his own cost against fire, water and loss through theft. If maintenance and inspection work is necessary, the customer must carry this out at the correct time at his own cost.
- 6.3 In the event of seizures or other actions by third parties, the customer must inform us immediately and in writing so as to enable us to file suite in accordance with § 771 ZPO (Code of Civil Procedure). If the suit in accordance with § 771 ZPO is successful and if the legal enforcement concerning third parties to cover the legal and non-legal costs of such a suit is conducted unsuccessfully, the customer is liable for the resulting default.
- 6.4 The customer can use the article of sale and sell them on in proper business activities so long as he is not in default of payment. However, he is not allowed to pledge the goods or to assign them as security. The payment claim of the customer against his buyers resulting from a reselling of goods under retention of title, as well as those claims of the customer concerning the articles of sale which result from a different statutory right against his buyers or third parties, (especially claims from unlawful acts and claims on insurance benefits) including all balance claims from current accounts is now assigned to us by the customer by way of security. We accept this assignment. The customer can collect these claims assigned to us for own account and in his own name, so long as we do not revoke this authority. Our right to collect these claims ourselves is not affected by this; admittedly we will not enforce the claims ourselves and will not revoke the collection authority as long as the customer performs his payment obligation properly. But if the customer behaves in a manner contrary to the contract – in particular if he is in default with a payment claim – we can demand of the customer that he informs us of assigned receivables and their debtors, that he informs the debtors of the assignment and passes to us all documents and all particulars which we require in order to claim the sums due.
- 6.5 Processing or transformation of the delivery item by the customer is always carried out for us. If the delivery item is processed with other items which do not belong to us, we acquire joint title in the new item in relation to the value of the purchase item (final invoiced amount including value added tax) to the other processed items at the moment of processing. The same applies to the item created by processing as to the goods supplied under reservation of title.
- 6.6 If the purchased item is inseparably combined with other objects which do not belong to us, we acquire joint ownership of the new item in proportion to the value of the purchased item (final invoiced amount including value added tax) to the other mixed objects at the moment of combination. If the combination is such that customer's item is to be regarded as the main item, it is seen as agreed that the customer transfers to us pro rata joint ownership.
- 6.7 The customer also transfers to us claims which secure our claims against him, which arise against a third party due to the article of sales being connected with a plot of land.

- 6.8 We undertake to release the securities due to us at the request of the customer insofar that the realisable value of our securities exceeds by more than 10% the claims that are to be secured. Selection of the securities to be released is incumbent upon us.

§ 7 Liability for defects

- 7.1 Claims in the event of defects by the customer will be conditional upon the latter having properly fulfilled his inspection and complaint obligations under § 377 HGB (German Commercial Code).
- 7.2 No liability is accepted for special items such as previously used machines.
- 7.3 Weights, dimensions, performance specifications, yields and other data which are given in sales brochures, advertisements and similar documents are to be seen only as indications. The same applies to samples presented or already provided.
- 7.4 In the event that there is a fault in an article of sale attributable to us, we are entitled to choose between rectification in the shape of repair of the fault or the delivery of a new fault-free item. In the event of repair, we are obliged to bear all costs necessary for repair of the fault, especially transport costs, travel expenses, labour and material costs, insofar that these are not increased by the delivery item being taken to a location different from the place of performance.
- 7.5 If the supplementary performance fails, which can be assumed at the earliest after the second attempt at rectification or subsequent performance, then the customer is entitled to rescind from the contract or to accept a reduction. Unless otherwise provided below (§§ 7.6, 7.7, 7.8 und 7.9), further claims of the customer - irrespective of the legal grounds – are excluded. We are therefore not liable for damage or loss which have not occurred on the delivery item itself; in particular, we are not liable for loss of production, interruption of business, the costs of any recall action lost profits or other financial losses of the customer.
- 7.6 We are liable, in accordance with the statutory provisions if the customer brings claims for damages which are based on intention or gross negligence, including intention or gross negligence of our representatives or vicarious agents. As far as we are not accused of wilful breach of contract, our liability for claims for damages is limited to the foreseeable, typically occurring damage.
- 7.7 We are liable, in accordance with the statutory provisions, if we culpably infringe any essential contractual obligation - essential contractual obligations are such the fulfilment of which shapes the contract and upon which the customer can rely. In this case, however, our liability for claims for damages is limited to the foreseeable, typically occurring damage.
- 7.8 Liability for culpable injury to life, limb or health remains unaffected; this also applies to mandatory liability laid down in the German Product Liability Act.
- 7.9 Claims arising from defects are subject to a limitation period which expires at the end of one year after they occur. However, this does not apply in cases of §§ 438 sec. 1 No. 2 and 634a sec. 1 No. 2 BGB. It equally does not apply in cases of intention or if a defect is fraudulently concealed, or if we have taken over a guarantee. Where claims for damages are concerned, the time limitation also does not apply in cases of injury to life, limb or health: for claims under the Product Liability Act nor in the case of grossly negligent breach of duty or breach of essential contractual obligations. Essential contractual obligations are such the fulfilment of which shapes the contract and upon which the customer can rely. The above regulations do not involve a change in the burden of proof to the disadvantage of the customer.

§ 8 Installation, commissioning, maintenance and services

- 8.1 Unless otherwise agreed, the installation and assembly of the articles of sale is carried out by the customer at his own risk.
- 8.2 In the event that we have assumed contractually the duty of installation and assembly, the following applies:
- 8.2.1 The customer has to provide in sufficient quantity handling support and equipment, including cranes, forklift trucks etc., for the unloading and erection of the articles of sale. The customer also provides in due time and at his expense all tools, qualified staff, oil, lubricants, water, steam, oxygen, electricity, air, drawings and data, raw materials as well as other articles, preliminary work and services which are necessary for the installation and taking into use of the articles of sale. This especially includes
- a suitable work and storage place as close as possible to the location in which the tasks for putting into operation are to be carried out;
 - the positioning of the equipment in the installation area which is in a suitable state to allow installation to be started;

- all necessary construction work, especially that concerning the ground, cabling, pipes, anchor bolts, floor channels, frames, grids, cover plates, supports for the pipes and cabling and for the mounting of overhead conveyors and installations onto the roof structure;
 - delivery, installation and connecting of all necessary cables except those cables integral to the equipment, including mains power cables, data cables, control and signal cables etc. from the main service consoles and operating centres to and between the connection points to the individual parts of the installation in accordance with our circuit diagrams, including shielded cable channels or cable ties for power and data cables in accordance with our specifications;
 - standard IT hardware and software as planned (if not included in the tender);
 - positioning of the main server (if available) in a dry, clean, air-conditioned room with sufficient telephone and data-transmission connections to our supervisory staff and online service;
 - work permits and other permits which are necessary in the country in which the equipment is to be installed.
- 8.2.2 The customer has to prepare at his own cost and in accordance with the contractual agreements the room(s) for installation and to ensure that the necessary power connections and technical installations are at hand. The customer is solely responsible for the structural design. Before the start of installation work the customer has to provide us with all necessary information concerning the location and presence of the utility connections such as power, gas and water supply. This especially applies to concealed installations. We are not liable for any damage caused because the customer did not perform the above commitments.
- 8.2.3 The place of installation for the machines must be freely accessible, and either a suitable indoor crane must be available or the floor of the hall must take the load of a truck or mobile crane. The floor of the hall must be kept clear in the area of the necessary installation of the machines.
- 8.2.4 Before the start of the installation of a machine, the delivery parts must be on site. Construction and other preliminary work must be completed to a sufficient extent that the erection can start immediately the fitter arrives and it must be able to be carried out without interruption. New buildings must be dry, the floors and walls cleaned, with doors and windows fitted. The customer must ensure that, for the type of machine to be installed, the necessary foundations with sufficient load-bearing capability exist (concrete levelled with spirit-levels). The customer is responsible for any measures for structure-borne sound insulation.
- 8.2.5 We invoice the actual number of hours for the services of our fitters (where applicable, with surcharges for overtime and for work at weekends, on statutory holidays and at night). The usual surcharges in tariff agreements apply to work on Sundays and public holidays. Overnight expenses, daily subsistence expenses, travel costs, and allowances for working away are calculated separately. Mileage allowance is calculated from Georgsmarienhütte. Special journeys by the fitters, for example to acquire replacement parts etc., will be similarly charged to the customer where these are essential for the taking into use of the machine and where the requirement first became apparent during the assembly. The prices given are exclusive of statutory value added tax.
- 8.2.6 All parts which become additionally necessary during assembly, which were not expressly listed and which are necessary for taking into use due to unusual, unforeseeable local conditions and/or a special request of the customer, or because of requirements of the local supervisory authority are invoiced separately with verification.
- 8.2.7 Interruptions in assembly due to missing connections, construction work, power cuts etc., for which we are not responsible are at the customer's cost, unless the customer for his part was not responsible for these occurrences.
- 8.2.8 Additional works, which do not form part of the contractually agreed scope of delivery, will be charged for at cost. This is to be agreed separately between us and the customer. Waiting time during our presence or additional fitters for commissioning of the machines are at the customer's expense, unless the waiting time is due to circumstances for which the customer is not responsible.
- 8.2.9 Any inclusive installation lump-sums do not include work on Sundays or public holidays; installation lump-sums are only valid if all construction preparation measures have been completed.
- 8.2.10 The customer bears the costs of assistants for our technicians (Electricians, auxiliary staff and suitable lifting gear) for the duration of the contracted works, where these are necessary. The customer is entitled to prove to us that the assistance to complete the contracted works was not necessary.
- 8.2.11 The operating instructions provided by the respective manufacturer are given with each machine. The costs of individual instruction are not included in the purchase price and will be charged for the time expended in accordance with our installation rates.
- 8.2.12 The customer is to confirm to us in the installation report that all works quoted in the contract have been properly carried out. A copy is given to the customer for his records.
- 8.2.13 Unless otherwise agreed in the contract, we are not liable for:

- interfaces between our installations and /or our software on one hand and elements provided by the customer or third parties on the other hand;
 - compatibility with other software of the customer's;
 - coordination between our work and that of other providers.
- 8.3 Maintenance work will be carried out by us only to the extent laid down in the contract or in a special service contract. The provisions of the relevant service contract apply to the services
- 8.4 If the customer takes over the service works, especially the installation and taking into use, we are freed from any liability. In particular, we are not responsible for any faulty workmanship by the customer who failed to follow our recommendations, our drawings and specifications. Nor do our employees check whether all their instructions have been properly carried out by the customer.

§ 9 State provisions/safety/usage

- 9.1 For individual parts of the installation we have observed machine guidelines 2006/42/EG, provided that the customer installs safety features which according to the contract fall into his area of responsibility. However, we do not guarantee that the installations conform in each case with the locally applicable provisions for occupational safety unless this is not expressly agreed in the contract. In the event that an inspection by the local (supervisory) authorities is necessary before the commissioning of the installation; this also falls into the customer's area of responsibility.
- 9.2 The customer ensures that our employees can carry out their work without any danger to their health.
- 9.3 The products are intended only for the use which is specifically described in the contract and in our handbooks. We are not liable for any other use of the products, even if we are aware thereof.
- 9.4 The customer indemnifies us against all claims of his employees, representatives or third parties relating to injury to persons or damage to objects caused directly or indirectly by the failure of the customer, his employees, representatives or other third parties to observe our safety, operating and/or maintenance instructions. This indemnification includes all costs arising to us including attorney's fees and expenses.

§ 10 Supplementary conditions for software

- 10.1 We cede to the customer the rights of use of the software to be transferred and other copyright-protected proprietary work results to the extent of the contractually planned purpose. Where not otherwise agreed, we cede to the customer a right of use for the period of usage or duration of the contract, or in other way time limited, non-transferable and non-exclusive, for the installation of this software onto a data bank and for the use of this software as embedded software or as application software as the case may be, in the manner described in the contract. The customer is not permitted to completely or partially transfer to third parties the right of use granted to him, nor to grant corresponding rights of use to third parties. We reserve the right to revoke this license if the conditions of the license are violated or if the customer breaches in some other way the provisions of the underlying contract.
- 10.2 In the event that the rights of use are transferred only for a limited period, or if the transfer of the license ends for other reasons, all the rights transferred revert to us upon expiry of the license without the taking of further legal steps. The customer is obliged to delete all license products which he holds and to return all documentation.
- 10.3 Transfer of the source codes to the customer is excluded, unless otherwise specifically agreed.
- 10.4 If we use for the execution of the contract the services and results, especially the rights of usage of third parties, we will request their rights of usage to the extent necessary for the completion of the execution of the contract and transfer these to the customer. If it is impossible for us to request the rights of usage to this extent, or if the rights of usage by third parties are limited, we will inform the customer of this. The latter has to observe these restrictions. We are not obliged to ensure the rights of use for services and works provided by the customer.
- 10.5 The customer is entitled to create a copy of the software solely for safety reasons, which is labelled as a copy and which must be provided with a notice that we are the copyright owners.
- 10.6 The customer must not remove any notice(s) concerning copyright.
- 10.7 The customer hereby undertakes not to alter the software, not to decompile or re-engineer it, and not to copy it except where this is specifically permitted in these general terms and conditions of sale.
- 10.8 A prerequisite for maintenance and service measures on transferred software is a separate maintenance and/or service and support agreement.

- 10.9 We will transfer the rights of usage necessary for the use of our products and services to the degree described above to the customer only when all claims for remuneration, fees and refund of costs in respect of the contract have been settled.
- 10.10 In the event of loss of data, we are liable only for such expenditure as is necessary for restoring the data, assuming correct data storage by the customer. In the event of minor negligence, we are liable only if the customer had carried out a proper backup of the data immediately prior to the measure which led to the loss of data.
- 10.11 Our liability and warranty are excluded insofar as damages and/or interruptions are caused by the customer wilfully violating the provisions of this contract, or making alterations, against the provisions of the contract or our suggestions, to the software supplied by us or using the software supplied by us in a system environment which was not agreed in the contract.
- 10.12 In the event that we are obliged to deliver and transfer articles or software or to produce other work such as surveys or analyses, the provisions of § 7 also apply to defective delivery and performance accordingly.
- 10.13 The limits of liability apply accordingly for the personal liability of our employees, representatives and vicarious agents.

§ 11 Protection of intellectual and industrial property rights

- 11.1 All intellectual and industrial property rights regarding the product remain with us. The customer undertakes not to claim any rights with regard to the Intellectual and industrial property rights relating to the product, changes to the product, processes in connection with the installations, or for other things which are an appropriate extension of the function or functionalities of the products.
- 11.2 We state that to the best of our knowledge and belief the installations already provided did not, at the moment when the contract was signed, infringe any rights of intellectual property and/or industrial property rights of third parties which apply to the site at which the plants are to be installed. In the event that, nevertheless, at the moment when the contract is signed, infringe such rights of intellectual property and/or industrial property rights, we have the choice between the following:
- obtaining for the customer the right of continued usage of the installations,
 - modifying the installations in such a way that the infringement of rights no longer exists,
 - replacing the installations with installations which do not infringe any rights or
 - withdrawing from the contract or a part thereof and to refund the purchase price paid by the customer in respect of that part of the installation which infringes the rights (less an appropriate sum for the loss of value which has occurred). In this case the installations are to be returned to us step by step against the refund of the purchase price.
- 11.3 Any further liability of our company due to infringements of intellectual and industrial property rights of third parties is excluded, except in the case of gross negligence or intention. In no case can we be held liable in respect of third parties for claims for the infringement of intellectual and/or industrial property rights if such claims are in connection with images, drawings, catalogues, specifications or other material which was supplied to us by the customer or in his name.
- 11.4 We will defend the customer – subject to the foregoing limitations of liability – against any claims deriving from an infringement of industrial property rights, copyright and/or other protective rights caused by the contractual use of our products and we will bear the costs and damages contributions, provided that he has informed us in writing and without delay and that all defence matters and negotiations remain in our hands.
- 11.5 All information and documents supplied by us to the customer remain our property, must not be copied by the customer, not revealed to third parties and are to be used solely for the agreed purpose.

§ 12 Confidentiality

- 12.1 Unless provided otherwise between us and the customer, none of the contractual parties has to right to reveal to third parties contents of the cooperation or other information which has been provided by, or in the name of, the respective other contractual party which, by rational considerations, are confidential and/or are worthy of protection.

Revealing such information is, however, permitted to the contractual parties provided that

- (a) at the time it is revealed, it;
- (aa) is generally known;
 - (bb) has been published;

- (cc) is already part of general expertise;
 - (dd) is the general part of the art;
 - (ee) is individually known by the contractual party receiving it. The contractual parties will inform each other in writing concerning such prior individual knowledge;
- (b) after the time it has been revealed, it
- (aa) becomes generally known without anything done by the contractual party which infringes the confidentiality agreement;
 - (bb) the concrete contractual partner is individually informed by a third party, without this third party infringing any obligation to confidentiality in respect of the confidential information;
 - (cc) becomes known or is developed by the customer receiving it independently and without reference to the confidential information;
 - (dd) is made known in writing to the public by the disclosing party;
 - (ee) has to be published in accordance with mandatory statutory provisions.
- 12.2 Passing on such information to third parties is permissible if this is essential for the performance of the contract.
- 12.3 The customer undertakes to pay a contractual penalty for each case of culpable violation of the above duty of confidentiality. Each penalty shall be determined by us at our reasonable discretion and in the event of a dispute, is to be reviewed by a court of competent jurisdiction. The right to lodge a claim for further damages remains unaffected, with the contractual penalty being, however, offset against the additional compensation.

§ 13 Exclusion of further liability

- 13.1 Liability for damages beyond the provisions set out individually in the above mentioned conditions is excluded, irrespective of the legal nature of the claim made. This applies especially to claims for damages due to negligence of contract, because of other breach of duty or claims in tort for material damage as defined by § 823 BGB. In the case of a claim for damages for negligence in contracting (culpa in contrahendo) the exclusion of liability stated above is tantamount to a subsequent waiver of liability as a result of the claim already existing at conclusion of the contract. In addition, we are not liable if the customer is held liable for infringement of provisions concerning industrial property protection.
- 13.2 The limitations according to sec. Abs. 1 also apply if the customer demands compensation of useless expenses instead of damages.
- 13.3 Insofar as liability for compensation against us is excluded or limited, then this also applies in respect of the personal liability for compensation of our employees and executives, employee representatives and vicarious agents.

§ 14 Limitation

Claims by the customer against us, irrespective of their legal grounds, expire at the end of one year from their occurrence. This does not apply with regard to case under §§ 438 Para. 1 No. 2 and 634a Para. 1 No. 2 of the BGB. It equally does not apply in the event of intention nor if a defect is fraudulently concealed, or if we have taken over a guarantee. The above time bar on claims for damages also does not apply in cases of injury to life, limb or health or freedom, claims under the German Product Liability Act, or in the case of a grossly negligent breach of duty or the infringement of essential contract obligations. Essential contractual obligations are such the fulfilment of which shapes the contract and upon which the customer can rely. The above regulations do not involve a change in the burden of proof to the disadvantage of the customer.

§ 15 Other provisions

- 15.1 Place of performance and court of jurisdiction is 49124 Georgsmarienhütte, Federal Republic of Germany. We also have the right to take legal action at the court responsible for the customer, or at any other court which, under national or international law can be responsible.
- 15.2 The customer declares his consent to our storing data in accordance with the German Data Protection Act.
- 15.3 Transfer to the customer of any guarantee or warranty rights, licenses and other rights granted to him within the scope of the contractual relationship with us is not permitted, unless we have agreed in writing to the transfer.

- 15.4 If the customer sells to third parties the products or the software from third party providers or exports these, he undertakes to observe at all times the valid import and export legislation for sales of this sort.
- 15.5 The laws of the Federal Republic of Germany shall apply under exclusion of the reference norms of German international private law and the UN Sales Conventions.