

## **1. OFFERS, CONFIRMATION OF ORDER AND DESCRIPTION OF PRODUCTS**

1.1. Deliveries, services and offers made Wärtsilä ELAC Nautik GmbH (referred to as "ELAC" or "Seller") are exclusively subject to these terms and conditions unless both parties expressly agree upon other terms in writing.

1.2. Contracts on sales or services will be binding by means of a bilateral contract or with the written confirmation of the order by ELAC which includes these terms and conditions in its recent version. Any terms and conditions used by the Customer shall hereby be excluded. The delivery of goods ordered and the performance of services requested shall substitute the written confirmation.

1.3. Descriptions and Information in product catalogues, technical specifications and pricelists shall only be binding, when contracts or these Conditions of Sale and Rendered Services expressly refer thereto. Such descriptions shall not be interpreted to form a guarantee or warranted characteristics unless expressly stated otherwise.

1.4. Delivery of software and services rendered with respect to software products shall be performed by ELAC in accordance with the following additional special provisions:

1.4.1 The product specification shall form the basis for the delivery and the services to be performed by ELAC. Such product specification shall be signed by both parties, Customer and ELAC. By not signing the product specification ELAC's respective software specification shall be deemed agreed.

1.4.2 ELAC retains the Copyright of all delivered software. Customer is only entitled to use the software in his own business and to the extent thereof. The Customer has the right to obtain the software specifically designed for his purposes. Source code, which enables the Customer to create its own or maintain the software, shall only be delivered on the basis of a separate agreement, if the product sold is specifically designed for Customer or if required by a license agreement associated with the source code.

1.4.3 Customer is not entitled to distribute the software to a third party unless agreed upon with

ELAC. Customer shall in any case flow down any use restrictions existing to the benefit of ELAC or any third party onto anyone the Customer contracts with regarding such distribution.

1.4.4 Customer must not hand any furnished copies of ELAC's software to a third party; third party shall mean any affiliated company, subsidiary, daughter and/or mother company as well as any other company belonging to the Customer's corporate group, if any.

## **2. PRICES**

2.1. Unless otherwise agreed upon all prices shall be net in € (EUR) quoted for deliveries made EXW Kiel (INCOTERMS ® 2010), and do not include value added tax, packing, installation of the product or other extra expenses such as costs and fees for order acceptance, or for license. Prices are payable as set forth in the confirmation of the order of the Seller. EU Customer shall provide its VAT Registration Number allocated to him, if any. If EU Customer should not provide for a valid VAT Registration Number then value added taxes will be charged.

2.2. As far as not stated otherwise ELAC is bound to the prices listed in offers specifically prepared for 30 days from the date of such offer; apart from that offers are non-binding and subject to change.

2.3. If the time between contracting and the agreed and actual delivery date exceeds six (6) months the prices listed in ELAC's price list in force at the time of delivery of the product shall apply unless otherwise provided; if such price exceeds 10% of the agreed price, the Customer is entitled to rescind from the contract.

## **3. PAYMENT, DOWN PAYMENT, DEFAULT OF PAYMENT**

3.1. Customer shall pay the contractual price within thirty (30) days of receipt of an invoice without deduction, provided that no other payment term has been agreed upon in writing.

3.2. ELAC shall have the right to request payment via an irrevocable and advised sight letter of credit ("L/C"). The L/C shall be opened at least 90 days prior to delivery and shall have a validity of at least 120 days. Transshipment and partial delivery shall be allowed. Documents to be presented to the

bank at sight shall be an original invoice, a duly issued Certificate of Conformity as well as a packing list and Bill of Lading/Airway Bill, as the case may be.

3.3. Unless otherwise agreed upon in writing, the Customer shall pay a down payment of 30% calculated on the value of his order placed with ELAC. Such down payment shall be immediately due and must be paid immediately after confirmation of the order. The payment shall be completed latest 30 days as of delivery of the purchased goods.

3.4. ELAC shall have the right to demand payment in advance, cash on demand (C.O.D.), letter of credit or security in form of a bank guarantee if circumstances, such as, but not limited to, suspension of payment, refusal of cashing a cheque or being in default of balancing not only minor payment obligations, become apparent that give reason to assume that Customer is not or will not be credit-worthy.

3.5. In case of a delay of payment ELAC is entitled to demand overdue interest of 8% over the basis rate for interest of the "Deutsche Bundesbank" (German Central Bank) as of the due date unless a consumer is involved in the transaction.

#### **4. TIME OF DELIVERY, FORCE MAJEUR, DEFAULT OF DELIVERY AND PART DELIVERY**

4.1. Equipment shall be delivered at the place named and on terms as set out in the Contract in accordance with INCOTERMS ® 2010. If Customer and ELAC have not agreed upon a binding delivery date delay shall only be constituted after providing ELAC with a reasonable grace period for delivery (at least 30 days) in writing.

4.2. Delivery dates shall be conditional to all technical, mercantile and legal aspects of delivery and performance of work being clarified by the day of delivery and to the Customer having provided or will provide in time all required documents on his part (e.g. installation plans, licenses, permits (specially import licenses)) as well as all payments due (incl. down payments, opening of a letter of credit or providing a bank guarantee).

4.3. On delivery, the Customer, its representative or an internationally recognised inspection service shall, at the cost of the Customer, inspect the Equipment. The Customer shall, within three (3) calendar days after the Delivery, give a written notice to ELAC of any relevant matter the Customer considers not to be in conformity with the Contract. If the Customer fails to give such notice the Equipment shall be deemed to have been delivered fully in conformity with the Contract.

4.4 Either party shall be entitled to suspend the performance of its obligations under the contract to the extent that such performance is impeded or made unreasonable onerous by Force Majeure or similar circumstances beyond control of the parties. Force Majeure implies for examples strike, fire, earthquake, storm rebellion, war (whether declared or not), seizure, embargo, unforeseeable acts of authorities or delays of delivery by subcontractors caused by any such circumstances referred to in this clause. Either party shall be entitled to rescind from the contract by notice in writing to the other party if performance of the contract is suspended for more than six (6) months.

4.5. The party claiming to be affected by Force Majeure shall notify the other party in writing without delay on the Intervention and on the cessation of such circumstances. Customer shall compensate ELAC for expenses incurred in securing and protecting the product, if Force Majeure prevents Customer from fulfilling his obligations.

4.6. If Customer is a merchant, he is only entitled to claim damages for delay, if Equipment or Services is delayed due to fault attributable to ELAC for more than 14 days or if any granted grace period for delivery has expired. Any such liquidation for damage amounts to a maximum rate of 0.25% of the value of the late item for every delayed week completed but only up to 5% of the total invoice amount for the deliveries and services concerned. These liquidated damages shall be the Customer's sole and exclusive remedy for delay, unless any losses proven by the Customer in excess of liquidated damages were caused by gross negligent or intent on behalf of ELAC in the context of such delays or losses. In

any event, the limitations of liability set out in clause 9 and 2.3 shall remain unaffected hereby.

4.7. If performance of any obligations under this Contract is delayed for any reasons attributable to the Customer, or at his request without prejudice to ELAC's rights under the Contract, ELAC shall be entitled to claim for compensation in respect of all costs, losses and expenses, and to extend the time for performance.

4.8 In order to facilitate the traffic of goods with traders ELAC is entitled to make partial deliveries or performances.

## **5. PLACE OF PERFORMANCE, ACCEPTANCE TESTS, PASSAGE OF RISK**

5.1. Place of performance for delivery and services of ELAC is the place of manufacturing, hence Kiel ex works (EXW), unless otherwise agreed upon in writing.

5.2. Where acceptance tests are necessary but not provided for in the contract, such tests shall be carried out at the place of manufacture during normal working hours. The date and time of the tests shall be notified to the Customer one week prior. The tests shall be carried out in accordance with the general standards applying in the respective German branch of industry.

New tests can only be requested by Customer in case of substantial defects.

ELAC shall bear the costs and expenses of tests carried out at its factory, but excluding any costs and expenses of the Customer. If the Customer is not represented at the tests after having been duly notified, the test report shall be deemed to be accepted as being accurate by the Customer.

5.3. If the Customer takes, or allows a third party to take the Equipment into use prior to the issuance of the Acceptance Certificate or the completion of all acceptance test, agreed upon in the Contract, the Customer shall be deemed to have waived any warranty claims and the Equipment or Services shall be deemed accepted by the Customer, as having being delivered in all respects free of any defects and fully in conformity with this Contract.

5.4 ELAC is entitled to refuse further performance of the contract and to claim

damages if Customer refuses to accept the products delivered or if he rescinds from the contract before delivery. Without further proof necessary ELAC shall be entitled to claim damages at the rate of 20 % of the amount invoiced including costs for shipping and packing of the non-accepted products or services. ELAC reserves the right to prove and to claim higher damages (e.g. deliveries or performances which cannot be commercialized again).

Customer shall have the right to prove lower damages and to reduce the aforementioned claim thereby.

## **6. RETENTION OF TITLE**

6.1. ELAC shall be granted the following securities until Customer has fully satisfied all obligations for any reason now and in future, including all claims for balances based on current accounts:

6.1.1 ELAC retains title of all products until payment is fully made. Combination, processing and intermixture are always carried out for ELAC as producer, but without constituting any obligation for ELAC. In case ELAC loses title because of intermixture the so constituted Customer's right to (co-)ownership shall automatically be transferred to ELAC pro rata the value of the product (as invoiced). Customer shall possess the product to which ELAC has (co-) ownership as bailee free of charge for ELAC.

6.1.2 Customer is only authorized to process and sell such products being subject to retention of title in the ordinary conduct of business as long as he is not in default with any payment. Customer is not authorized to pledge such products or transfer them by way of security.

6.1.3 Customer hereby completely assigns in advance his claims resulting out of any sale of any such product being subject to retention of title or arising out of any other reason (e.g. insurance, tort), including all claims for balances based on current accounts, to ELAC.

ELAC hereby revocably authorizes Customer to collect such assigned claims on behalf of ELAC but in his name. This authorization can be withdrawn if Customer does not meet his payment obligations.

6.1.4 In case the Customer sells any product being subject to retention of title together with other products, it is hereby agreed that the assignment shall only comprise the part of the total claim which corresponds to the value of such product being subject to retention of title plus 20% thereof.

6.2. Customer shall immediately inform ELAC of any third party claim, title or other right with respect to a product being subject to retention of title, especially in case of seizure. He shall also inform such third party that ELAC holds title of the respective product. If such third party is not able to compensate ELAC for the costs arising out of litigation to defend ELAC's title, whether inside or outside court, Customer shall be liable for all such costs.

6.3. If the value of the security granted exceeds the total amount of ELAC's claims by more than 20%, then upon Customer's request ELAC reduces the security accordingly. This shall not apply if the partial reduction of security will eventually result in giving up the security entirely.

6.4. In any case of breach of contract by the Customer, especially delay of payment, ELAC is entitled to request return of any product being subject to retention of title or, should the occasion arise, request transfer of rights to redemption which Customer respectively holds against any third party. Any execution of the aforementioned rights in this paragraph shall not mean the rescission of contract.

## **7. LIEN AND DESTRUCTION**

7.1. For its claims under any contract or order ELAC holds a security lien with respect to all movable goods of the Customer that have come into ELAC's possession.

The security lien also extends to older claims that have arisen out of work performed, spare parts provided and other performances delivered by ELAC, provided such claims are connected with the movable good concerned.

7.2. If the Customer does not pick up the movable good within four (4) weeks of a written or oral request provided to him by ELAC, ELAC shall be entitled to ask for adequate compensation for any storage associated with any of the Customer's movable goods. If within

three (3) months of said request the movable good has still not been picked up by Customer ELAC shall be released from its obligation to store the movable good. Any liability for negligence or destruction on ELAC's side shall upon release of said obligation be disclaimed. Upon release of the respective obligation ELAC shall be entitled to exploit and utilize the movable good concerned by selling said good at fair market value. If in ELAC's sole discretion the sale of said good should be deemed uneconomical said good may be destroyed at Customer's costs. The onus of proof that said sale would have not been uneconomical rests with the Customer.

## **8. WARRANTY**

### **8.1. [TERM OF WARRANTY]**

8.1.1. Warranty expires after twelve (12) months from the date of the claim being constituted, but at utmost eighteen (18) months from the date of delivery by ELAC. In cases of contracts with consumers or related claims of merchants the legal periods of expiration shall apply.

8.1.2. The period of warranty for spare and single parts (except consumption material) is limited to twelve (12) months beginning with the delivery ex works. ELAC does not grant a separate warranty for systems delivered in single components that have not been installed by ELAC or for used systems.

Clause 8.1.1. second sentence shall apply correspondingly.

8.1.3. Repairs and replacements are covered by the same warranty as the originally delivered product up to the end of the warranty period applying to the original product but at least for twelve (12) months.

8.1.4. The aforementioned limitations do not apply to claim arising out of gross negligence or wilful misconduct.

### **8.2. [LIMITATIONS AND EXCLUSIONS]**

8.2.1. This warranty shall not apply if instructions to run or maintain the products or systems were not obeyed, the products were modified, the installation was incorrect or the products and systems were operated, treated or used



inadequately, heavily strained or parts were exchanged or consumable parts, which do not correspond with the specifications applying to the original parts, were used.

8.2.2. This warranty shall not apply to normal wear and tear.

8.2.3. If the product is produced by a producer other than ELAC Customer shall first claim his rights against such producer out of court. Any claim that ELAC holds against such producer shall be assigned to the Customer, if so required. Customer hereby already accepts such assignation offer. If Customer is unable to assert his warranty claims against the supplier out of court, the subsidiary warranty by ELAC shall remain unaffected.

8.2.4. If Customer wishes that a repair shall be carried out at another location than the place of fulfilment, ELAC may undertake such repair. Replaced parts and the usual time spent (standard time, no overtime) with repair shall not be billed in such case.

However, Customer shall compensate ELAC for transportation and travel, travel allowance, possible overtime surcharges at ELAC standard rates. Replaced parts shall remain ELAC's property. The security interests as stated in no. 6 of these terms shall prevail with respect to such replaced parts and in favour of the additional costs mentioned in this paragraph and other claims already existing.

8.2.5. In case of a legitimate warranty ELAC may at its choice either repair the product or replace it by a new one ("Nacherfüllung"). In case ELAC fails to repair or replace a defective product within three remedy attempts or within an adequate period of grace granted by Customer, Customer may request damages in lieu of performance for non-performance, reduction of price of the defective product or withdrawal from the contract.

In case of only minor defects the Customer shall not have the right to have the defective product replaced ("Nacherfüllung"), to withdraw from the contract or to ask for damages in lieu of performance for non-performance.

8.2.6. ELAC is entitled to refuse repairs, if such

repairs would constitute disproportional expenses.

8.2.7. ELAC shall not be liable for material damages which are caused indirectly by the delivered parts. Unless subject to indispensable legal provisions ELAC hereby excludes its liability for, but not limited to, standstill of production, loss of profit or non-usage, docking cost, or any other economic or indirect damage unless otherwise provided by law.

### 8.3. [DUTY OF COOPERATION]

8.3.1. Any obvious defect shall be notified immediately at least within **eight (8) days** after delivery or performance.

8.3.2. The Customer, if possible, shall describe the defect so that ELAC can take the necessary measures to remedy the defect.

8.3.3. Customer shall give ELAC the time and opportunity required for repair and replacement as well as auxiliary personnel free of charge.

8.3.4. Customer is only entitled to repair defects by himself or by third parties in case of an imminent safety hazard or in order to prevent disproportionately large damages. ELAC shall only reimburse the Customer for the necessary costs incurred by such actions if Customer immediately after discovery of such defects has informed ELAC of such measures in writing and only if ELAC has explicitly confirmed such undertaking.

8.3.5. ELAC shall be granted access to the defective part, item or the like free of charge for ELAC.

8.4. If the notice of defect turns out to be erroneous Customer shall compensate ELAC for all costs and expenditures incurred as a result of the notice.

### 8.5. [SPECIAL PROVISIONS APPLYING TO SOFTWARE]

The following provisions apply to software:

8.5.1. ELAC warrants that the software provided by it is substantially in accordance with the product description. There can be no claim under this warranty in the case of minor or immaterial deviations from the agreed or assumed characteristics nor in the case of just

slight impairment of use. Product descriptions shall not be deemed guaranteed unless separately agreed in writing. In respect of updates, upgrades and the delivery of new versions, the warranty shall be limited to the new features of the update, upgrade or new version compared to the previous version release.

8.5.2. Software defects shall only mean such defects that can be reproduced. In case Customer uses programs, software, interfaces etc. produced by a third party ELAC shall not encounter any additional liability or grant any additional guarantee.

8.5.3. If Customer demands replacement performance because of a defect, ELAC has the right to choose between the improvement, replacement delivery or replacement of services.

If the defect is not cured within a first time limit and Customer has set ELAC a reasonable second time limit without success or if a reasonable number of attempts to remedy, replacement deliveries or replacement services are unsuccessful, then Customer may, subject to the statutory prerequisites, at its option withdraw from this agreement or reduce the price and claim damages or reimbursement of costs. The remedying of the defect may also take place through the delivery or installation of a new program version or a work-around. If the defect does not or not substantially impair the functionality, then ELAC is entitled, to the exclusion of further warranty rights, to remedy the defect by delivering a new version or an update as part of its version, update and upgrade planning.

8.5.4. Defects must be notified in writing with a comprehensible description of the error symptoms, as far as possible evidenced by written recordings, hard copies or other documents demonstrating the defects. The notification of the defect should enable the reproduction of the error. This shall not affect the statutory obligation of Customer to inspect and notify defects.

8.5.5. If the defect is caused by the defective products of a supplier and the supplier does not

act as an assistant in performance of ELAC, rather ELAC is merely passing on a third party product to Customer, then ELAC's warranty shall at first hand be limited to the assignment of its warranty claims against the supplier. This shall not apply, when the defect is caused by improper handling of the supplier's product for which ELAC is responsible. If Customer is unable to assert his warranty claims against the supplier out of court, the subsidiary warranty by ELAC shall remain unaffected.

8.5.6. Any claims for damages are subject to the limitations set forth under No. 9 of these terms and conditions.

8.6. Claims for warranty shall only be held by the direct Customer. Such claims cannot be assigned to a third person unless otherwise provided. This limitation shall not apply to claims arising out of personal injuries or claims based on the Product Liability Act. ("Produkthaftungsgesetz")

8.7. ELAC shall be responsible for any damage which occurs to other parts but the delivered items only if such damage is caused by intent or gross negligence, culpable damage of life, body or health; for aforementioned damage occurring in spite of an explicit guarantee or in case of malicious concealment or according to the liability for personal damage or damage to property in private use as provided by the Product Liability Act. ("Produkthaftungsgesetz").

8.8. THE WARRANTY SET OUT IN THESE CONDITIONS IS THE ONLY WARRANTY APPLICABLE TO THE EQUIPMENT AND SERVICES SUPPLIED PURSUANT TO THIS CONTRACT. THIS WARRANTY REPLACES AND EXCLUDES, TO THE EXTENT PERMISSIBLE BY LAW, ANY OTHER GUARANTEE, WARRANTY AND/OR CONDITION IMPOSED OR IMPLIED BY LAW, CUSTOM, STATUTE OR OTHERWISE AND/OR RESULTING LIABILITIES, INCLUDING FITNESS FOR PURPOSE OR LIABILITY FOR LATENT DEFECTS.

Legal claims arising out of consumer contracts ("Verbraucherverträge") shall only be subject to the aforementioned limitations to the extent provided by applicable law.

## **9. LIMITATION OF LIABILITY**

9.1 IN CASE OF GROSS NEGLIGENCE OR WILFUL MISCONDUCT ON ELAC'S PART OR BY ELAC'S AGENTS OR ASSISTANTS IN PERFORMANCE ELAC SHALL ONLY BE LIABLE IN ACCORDANCE WITH THE PROVISIONS OF APPLICABLE LAW. THE SAME SHALL APPLY IN CASE OF BREACH OF FUNDAMENTAL CONTRACT OBLIGATIONS. FOR THE PURPOSE OF THESE CONDITIONS OF SALE AND RENDERED SERVICES AND THE CONTRACTUAL RELATIONSHIP CONSTITUTED THEREBY, "FUNDAMENTAL CONTRACT OBLIGATIONS" SHALL BE DEFINED AS SUCH OBLIGATIONS WHOSE FULFILMENT MAKE THE PROPER EXECUTION OF THE ORDER CONSTITUTED BY THESE CONDITIONS OF SALE AND RENDERED SERVICES POSSIBLE IN FIRST PLACE AND THE OBSERVANCE OF WHICH THE CUSTOMER REGULARLY RELIES UPON AND MAY RELY UPON.

TO THE EXTENT SUCH BREACH OF CONTRACT IS UNINTENTIONALLY THE LIABILITY FOR DAMAGES SHALL BE LIMITED TO THE TYPICALLY FORESEEABLE DAMAGE AND, AS FAR AS PERMITTED BY APPLICABLE LAW, TO NO MORE THAN THE CONTRACT PRICE.

9.2 EXCEPT WHERE EXPRESSLY PROVIDED OTHERWISE IN THE CONTRACT, THE SUPPLIER SHALL NOT BE LIABLE UNDER ANY CIRCUMSTANCES, AND IRRESPECTIVE OF THE CAUSE OF ACTION, FOR INDIRECT OR CONSEQUENTIAL LOSSES, SUCH AS – BUT NOT LIMITED TO – COMMERCIAL OR ECONOMIC LOSSES, LOSS OF PRODUCTION, LOSS OF USE, LOSS OF REVENUE, LOSS OF PROFIT, DELAY AND BUSINESS INTERRUPTION AND OTHER SIMILAR CAUSES OR LOSSES, WHETHER DIRECT OR INDIRECT. FURTHER, THE SUPPLIER IS NOT LIABLE FOR LOSS OF TIME, LOSS OF EMPLOYMENT OR OPPORTUNITY TO UTILIZE THE EQUIPMENT OR SERVICES SUPPLIED, COSTS OF SUBSTITUTED EQUIPMENT, TOWAGE CHARGES, POLLUTION CLEAN UP COSTS, DOCKING OR DIVING COSTS, DAMAGE TO THE VESSEL OR OTHER ASSETS,

DEMOUNTING OR MOUNTING COSTS OR/AND COSTS OF SEA TRIALS OR OTHER TESTS AND INSPECTIONS.

9.3 ELAC'S LIABILITY FOR CULPABLE DAMAGE TO LIFE, BODY OR HEALTH AS WELL AS ELAC'S LIABILITY UNDER THE PRODUCT LIABILITY ACT ("PRODUKTHAFTUNGSGESETZ") SHALL REMAIN UNAFFECTED.

9.4 ANY LIABILITY NOT EXPRESSLY PROVIDED FOR ABOVE AS WELL AS IN THESE TERMS SHALL BE DISCLAIMED.

## **10. SET OFF**

Customer is only allowed to set off counterclaims as far as they are undisputed or have legal force.

## **11. DRAWINGS AND DESCRIPTIONS**

11.1. If a party makes available drawings and technical documents of the delivered product, its manufacturing or the installation, prior or subsequent to the formation of the contract, these shall remain the property of the submitting party.

11.2. Drawings, technical documents or other technical information received by one party shall not be used without the prior consent of the submitting party for any other purpose than erection, commissioning, operating or maintenance. They may not, without prior consent of the submitting party, be used otherwise, copied, reproduced, transmitted or communicated to a third party.

11.3. If so requested ELAC shall provide information and drawings which are necessary to enable the Customer to install, set to work, operate and maintain the products against payment. Such information and drawings shall be supplied in the number of copies agreed upon but at least one copy of each. ELAC shall not be obligated to provide manufacturing drawings for products or spare parts.

11.4 Drawings, descriptions, material safety data sheets and manuals as well as other technical documentation shall be delivered in either the German and/or English language. Deliveries in other languages than the ones aforementioned may be arranged for upon separate or complementing order and against surcharge.

## **12. COPYRIGHT, TRADE-MARKS, PATENTS, ETC.**

12.1 ELAC shall hold Customer and its customers harmless against damages and costs imposed by a court in case of infringement of copyright, trademarks or patents unless the design of a product was delivered by Customer. Condition for holding save and harmless is that Customer authorizes ELAC to take all measures necessary in the litigation if the infringement is exclusively based on the design of the product without connection to other products or the use of other products. In case of doubt the Customer shall therefore provide ELAC with a third-party notice. The amount of recourse is limited to the foreseeable damage but no more than the contract price.

12.2. ELAC shall have the choice to seek release from the assumed liabilities mentioned in par. 11.1 by either procuring the necessary licenses of the alleged infringed patents or by placing at Customer's disposal a suitable supply or parts thereof and such resolves the reproach of infringement.

12.3. ELAC hereby points out that the good, item and/or object or parts of it to be delivered may be subject to third party intellectual or industrial property rights. Such restriction specifically applies to software.

## **13. DATA PROTECTION**

ELAC and Customer shall both abide by the restrictions of the German Federal Data Protection Act ("Bundesdatenschutzgesetz" - BDSG) as well as the Schleswig-Holstein Data Protection Act ("LDSG S.-H.") and keep all documents confidential, unless the content is already common knowledge. Personal data will be stored and processed for the purpose of the execution of the contractual obligations.

## **14. CONFIDENTIALITY AND PUBLICITY**

This Contract or documentation supplied in its context may contain confidential and commercially sensitive information. No Party may allow any document or information relating to the subject matter, or any other information that may be commercially sensitive, to be disseminated or otherwise published or used, except as required by law or stock market rules, without the express prior consent in writing from

the other Party.

## **15. NON-DISCRIMINATING PERFORMANCE**

The Customer shall perform its obligations in a non-discriminating way in accordance with the German General Equal Treatment Act (Allgemeines Gleichbehandlungsgesetz).

## **16. EXPORT REGULATIONS**

16.1 The Customer shall provide ELAC with an end-user certificate within reasonable time, but at the latest within four (4) weeks after conclusion of the contract and/or order. The end-user certificate may be necessary for a valid export licence by German Export Authorities and therewith also necessary for on time delivery by ELAC. The Customer shall ensure an extension or a renewal of such end-user certificate if German Export Authorities require the same. The Customer is obligated to provide the Export documents in accordance with possible formal requirements requested by German Export Authorities.

If additional documents are needed for the Export licence applied for, the Customer shall provide these documents within the time limit mentioned above and – where required – in the specific form. If the application for the Export licence should be denied, the contract and/or order shall be rescinded (the denial of the Export licence is a resolutive condition) with no rights deriving therefrom to the benefit of the Customer. If the Customer culpably violates his obligation to cooperate and the Export licence should therefore be denied, ELAC shall have the option to validate the contract and to ask for the initially agreed sales price (Section 326 para 2 German Civil Code (BGB)). Possible compensation is not affected by this clause.

16.2 Under particular consideration of Section 4a German Foreign Trade Order ("Aussenwirtschaftsverordnung") as well as other applicable statutes ELAC hereby refuses to execute any declaration or to make any statement that might be considered a participation in a boycott towards another state or country. Any request to do so is hereby explicitly rejected and any statement so requested shall hereby be deemed not given.

16.3 Customer shall hereby be informed that in the event of a resale the delivered product may be subject to export restrictions and may require



an export license. The Customer is solely responsible for obtaining said authorization. The same applies to products being subject to US export restrictions.

directly or indirectly out of this contract.

End of Document

### **17. INTELLECTUAL PROPERTY RIGHTS**

ELAC shall retain all patent rights and intellectual property and trademark rights relating to any Equipment or Services supplied under this Contract and the Customer undertakes not to disclose any information or data relating to such Equipment and Services to any third parties without the prior written consent of ELAC. ELAC hereby grants to the Customer a royalty-free, non-exclusive and non-transferable right to use the Equipment.

### **18. MISCELLANEOUS PROVISIONS**

18.1 Any modifications, documentation, approvals or permits, custom duties and taxes, relating to Equipment or Services supplied under this Contract which are required by changes in law, including administrative regulations and international regulations, after the date of ELAC's offer shall be the responsibility of and arranged and paid for exclusively by the Customer.

18.2 The Customer shall be solely responsible for compliance with any environmental, health and safety rules and regulations applicable to its worksite and the use of delivered Equipment and spare parts.

### **19. INVALIDITY OF CLAUSES**

Should any of these Conditions of Sale and Rendering Services or other provisions agreed upon separately be or become invalid, then all other provisions mentioned herein shall remain in force.

### **20. APPLICABLE LAW, PLACE OF JURISDICTION**

20.1. These business terms and the entire legal relationship between ELAC and Customer shall be governed by the law of the Federal Republic of Germany. The regulations of the CISG and UNCITRAL shall not be applicable.

20.2. If Customer is a merchant, body corporate under public law or a body under public law with special assets the exclusive place of jurisdiction shall be Kiel to decide on any litigation arising