

## 1 General – Scope

- 1.1 The Terms and Conditions of Delivery and Services of the Wärtsilä SAM Electronics GmbH, Hamburg (in the following text referred to as the “Contractor”) are applicable only to national or international enterprises covered by Article 14, Section 1, of the German Civil Code, to legal persons under public law and to public law special funds covered by Article 310, Section 1, of the German Civil Code (hereafter “Ordering Party”).
- 1.2 The Terms and Conditions of Delivery and Services of the Contractor are exclusively applicable. Any conflicting conditions, additional conditions or conditions of the Ordering Party deviating from these conditions, will not be recognized by the Contractor, unless he has expressly, and in writing, agreed to their applicability. The Terms and Conditions of Delivery and Services of the Contractor apply even in those cases, where the Contractor, aware of conflicting conditions, additional conditions or conditions of the Ordering Party deviating from his own conditions, including possible award guidelines by corporations under public law, unconditionally performs deliveries to, or services for the Ordering Party.
- 1.3 The Terms and Conditions of Delivery and Services of the Contractor will also apply to all future business transactions relating to deliveries and/or services in the meaning of numbers 1.5 and 1.6 from current business relations with the Ordering Party.
- 1.4 All agreements reached between the Contractor and the Ordering Party must be laid down in a written contract. Any modifications, additions or extensions of the scope of these agreements are valid only when confirmed in writing.
- 1.5 Deliveries in the sense of these conditions are supplies comprised of products, in particular for vessels, of products for third parties and of spare parts.
- 1.6 Services in the sense of these conditions are work and/or services, in particular planning and planning work, installation, erection, overhaul, repair, advice, inspection operations, as well as the production or alteration of software. Services are furthermore subject to the Supplementary Conditions for Services of the Contractor (issue 06/2015).

## 2 Conclusion of agreement / Documents

- 2.1 Agreements concluded with the Contractor enter into force only, after the orders received by the Contractor have been confirmed in writing, or the supplies or services ordered have been delivered or performed, respectively. The same applies to requests by the Ordering Party aimed at supplementing, modifying or extending an agreement.
- 2.2 Data submitted to the Ordering Party, or documents made available to the Ordering Party do not represent quality guarantees. Measured values (e.g. performances, power requirements, range measuring accuracies, etc.) are stated without taking into account the effects of possible interferences or other external influences such as disturbances resulting from environmental sources, and are binding only if expressly made in writing as part of the agreement.
- 2.3 All rights over all documents given to or made accessible to the Ordering Party are reserved by the Contractor, in particular including all proprietary rights and copyrights. Without the prior written consent of the Contractor, documents given by or made accessible by the Contractor must not be used for purposes outside the agreement and must not be divulged to third parties. Upon request, such documents must be returned to the Contractor.
- 2.4 If not expressly stated otherwise in the offer submitted by the Contractor, offers are not binding.
- 2.5 In the case of export, the Contractor's offers apply to the country in which the Ordering Party has its seat of business, unless a different country is agreed upon in writing.
- 2.6 A cost estimate covering the services in question will be prepared and submitted by the Contractor if requested by the Ordering Party. Cost estimates are not binding. If no order is placed after a reasonable period of time has passed, an object subjected to inspection for the purposes of a cost estimate does not need to be returned to its initial condition when this technically or economically involves a disproportionate effort. Any costs arising from returning the object to its initial condition are borne by the Ordering Party.

## 3 Prices

- 3.1 Prices for deliveries
- 3.1.1 Prices of the Contractor for deliveries are always quoted net cash in EURO, ex the respective works, plus V.A.T. in the respective statutory amount, excluding the price of packaging, sending and other incidental costs (such as for installation and/or commissioning). For deliveries abroad the prices, in contrast to the above, comprise usual packaging.
- 3.1.2 If, exceptionally, a CIP delivery has been agreed upon, costs incurred for unloading, lightening and port and quay fees at the ship-to location are not included and are to be borne by the Ordering Party. This applies to domestic as well as to foreign deliveries.
- 3.1.3 If with a delivery abroad a delivery including the adoption of costs for customs and/or other fees by the Contractor has been agreed upon, the price given by the Contractor in the offer is based on rates for customs and/or other fees applying at the time of submission of the offer and the contractually agreed price is based on rates for customs and/or other fees applying at the time of conclusion of the contract. The actual costs for customs and/or other fees are to be calculated by the Contractor and are to be paid by the Ordering Party. Any V.A.T. levied will be included in addition.
- 3.2 The prices of the Contractor for services provided are quoted net in EURO, plus the applicable statutory V.A.T. The price calculation for services is based on time and expenses, unless it was agreed to provide the services

for a lump sum or per unit. Invoiced are the applicable cost rates and allowance rates of the Contractor, plus any incidental costs incurred. Articles 1.3.1 – 1.3.4 of the Supplementary Conditions for Services also apply.

- 3.3 Unless expressly agreed to the contrary, in the event of deliveries abroad or services provided by the Contractor abroad all excise, consulate fees and/or other taxes, fees and duties charged on the basis of provisions outside the Federal Republic of Germany, together with costs connected with these, are to be borne by the Ordering Party. This also applies to cases in which the remuneration of the Contractor's personnel to be paid is subject to taxation.
- 3.4 In the case of exchange rate movements the Contractor can request that value ratio between the Euro and the currency of payment which formed the basis of the prices set out by the Contractor in the offer also applies to the payment by the Ordering Party.
- 3.5 The agreed prices apply only to the order in hand.

## 4 Delivery; Time limits / Deadlines; Delay in delivery

- 4.1 Provided that nothing to the contrary has been agreed upon, an Ex Works delivery takes place on the basis of the Incoterms 2010. The place of performance is the depot at the seat of the Contractor. This also applies if partial deliveries have been agreed upon or it has been agreed that the Contractor, after bring the goods to the ship-to location, provides extra services in respect of the goods, such as set up, construction, installation or getting the goods up and running.
- 4.2 If it is agreed that the delivery by the Contractor is to a different ship-to location than the depot at the Contractor's seat of business, the delivery of the goods is at the cost and risk of the Ordering Party. In such a case the Contractor is entitled to determine the type of transportation (particularly forwarding companies, despatch route, packaging) itself. At the express wish of the Ordering Party, the Contractor will insure the delivery against theft, breakage, transportation damage, fire and water damage as well as other insurable risks at the expense of the Ordering Party.
- 4.3 The delivery times/deadlines and times/deadlines of performance are only binding if they have been agreed upon in the contract in writing. If nothing to the contrary has been agreed, the delivery time or time of performance commences with the mailing of the order confirmation, but not before the documents, approvals, releases and clarifications to be made available by the Ordering Party under the contract have been produced, duties of cooperation have been fulfilled, and any agreed down-payment has been received.
- 4.4 In the case of an agreed delivery of goods, the time for delivery or the deadline for delivery has been observed if by the expiry of the deadline, or at the latest on the date for delivery, the goods have left the Contractor's works. In the case of Ex Works deliveries the time or deadline for delivery has been met if the goods have been made ready to be picked up by the expiry of the deadline or the date of delivery.
- 4.5 The time or deadline of performance has been observed when the contractual services have been provided within the agreed time limits or by the agreed date. The time of performance is also deemed to have been observed, when minor reworking operations are required, provided the functionality of the object of performance is only minimally impaired by this.
- 4.6 Delivery times and times of performance are postponed extended, and deadlines are extended by the duration of any hindrance, plus a reasonable lead time due to an Act of God or other events outside the control of the Contractor, such as industrial actions, natural disasters and the procurement of raw materials. If the duration of the hindrance exceeds six months, both the Contractor and the Ordering Party have the right to terminate the agreement. In this case the Contractor, in accordance with Article 1.3 of the Supplementary General Conditions for Services, can demand from the Ordering Party the reimbursement of the expenses incurred in the period up to the stoppage of the work. In this case no damages can be claimed. The Contractor has a claim to a reasonable extension of the delivery time and time of performance and/or a postponement of the equivalent deadlines if the Contractor modifies, adds to or extends the scope of the deliveries or services involved at the request of the Ordering Party. Possible statutory withdrawal rights remain unaffected.
- 4.7 The circumstances laid down in the first sentence of number 4.7 above are not under the Contractor's control even if they arise during a delay which is already present. The Ordering Party's claim for compensation for the loss due to delay which accrued up until the respective circumstance occurred remains unaffected.
- 4.8 The commencement of the Contractor's late delivery is determined in accordance with the statutory provisions. The Contractor is not late if it cannot meet a date or deadline due to a delay in delivery by a supplier, provided that the Contractor has concluded a covering deal in good time.
- 4.9 If the Contractor defaults, and if the Ordering Party has suffered a loss due to delay as a result, the Ordering Party is entitled to demand set compensation for delay. This amounts to 0.5 per cent for every full week of the delay, in total however at most 5 per cent of the value of the contract in respect of the part of the delivery and/or service affected from the delay. Any losses for delay going beyond this are excluded. The Contractor is allowed to bring evidence that the Ordering Party did not in fact suffer losses due to delay or that they were lower than the fixed sum set out above. The Ordering Party's right to withdraw from the contract and to require compensation for non-contractual performance in the event of a delay and where statutory law allows for it remains unaffected. The above limitation of liability for loss due to delay does not apply in cases in which the Contractor is liable without limitation under number 12.2 of these Conditions. Faults of the Contractor's legal representatives and the Contractor's agents for the per-

- formance of the contract are to be seen as the Contractor's own faults.
- 4.10 If the Ordering Party requests a delay in the delivery, the Contractor has a claim to reimbursement of costs incurred due to further storage following the expiry of one month after the ready-for-shipment or collection note has been sent out. In the case of storage at the Contractor's works, the reimbursement per month amounts to 0.5 per cent of the value of the contract for the delivery concerned. The Contractor reserves the right to put forward further claims.
- 4.11 Special conditions for foreign business transactions
- 4.11.1 In the case of deliveries abroad, the respecting of foreign provisions, such as security, packaging, weighing or customs measures, only becomes a part of the Contractor's contractual obligations for the delivery if the Ordering Party has informed the Contractor in good time in writing to the necessary extent about the corresponding foreign provisions which are to be respected. The additional costs which are connected to the respecting of the foreign provisions are to be borne by the Ordering Party.
- 4.11.2 If in the case of deliveries abroad an end-user declaration is required to obtain an export license meeting the requirements of the "Bundesamt für Wirtschaft und Ausfuhrkontrolle" (hereinafter "BAFA") the Ordering Party shall, unless otherwise agreed upon, in due time, at latest within four (4) weeks of conclusion of the contract, provide the Contractor with such a declaration or shall upon request of the Contractor ensure an extension or a renewal of such a declaration should export regulations require the same. The Contractor shall provide the Ordering Party with a template for an end-user declaration should the Ordering Party request one.
- 4.11.3 In the case that additional forms, documents or information are needed for the end-user declaration and/or to support the application for an export license, the Ordering Party shall upon request of the Contractor provide the same without culpable delay and in line with the requirements defined by BAFA. In case of the export license being denied definitely for the deliveries and/or services contracted for in the respective contract, the Contractor shall have the right to withdraw from the respective contract. Executing said right of withdrawal does not entitle the Ordering Party to claim damages from the Contractor.
- 4.11.4 Under particular consideration of Article 4a German Foreign Trade Order ("Außenwirtschaftsverordnung") as well as other applicable statutes the Contractor hereby refuses to make any statement that might be considered a participation in a boycott towards other another state or country. Any request to do so, whether contained in the respective contractual documents or other documents, is hereby explicitly rejected.
- 4.11.5 If the Contractor provides services abroad, the Ordering Party has to ensure, at its own cost, that the Contractor will receive all necessary authorisations for the importation and exportation of tools, equipment and other materials.
- 5 Acceptance and delayed acceptance**
- 5.1 When due, and at the request of the Contractor, the Ordering Party has to accept the deliveries/services to be provided by the Contractor without delay. The obligation to accept the deliveries and services is the main obligation of the Ordering Party. The Ordering Party must not refuse the acceptance of deliveries or services on account of minor defects.
- 5.2 If the Ordering Party defaults in its obligation to accept the deliveries or services, the Contractor has the right to a fixed compensation sum in the amount of 0.5 per cent of the agreed value of the contract per ended week of the delay in acceptance, but at most 5 per cent of the agreed value of the contract. The Contractor's right to prove and enforce greater loss, together with the Contractor's remaining statutory rights, remains unaffected. The fixed compensation is to be set off against possible more extensive claims. The Ordering Party is entitled to prove that the contractor has suffered no loss whatsoever or a considerably smaller loss than the above fixed compensation.
- 5.3 If the prerequisites under 5.2 are present, the risk of chance destruction or chance deterioration in the goods / services is transferred to the Ordering Party from the point of time when the Ordering Party is in default of acceptance.
- 6 Acceptance procedure**
- 6.1 Deliveries or services will be accepted only, if this was agreed in writing or is legally provided for. If acceptance was agreed, the Contractor notifies the Ordering Party in writing about the readiness of the deliveries or services for acceptance. Acceptance has to occur within a period of 14 days. Acceptance must not be refused on account of defects that will not, or only insignificantly, impair the operability of the supplies. If the prerequisites for acceptance are present and, for reasons beyond the control of the Contractor, acceptance is not effected within a period of 14 days following the notification about the readiness for acceptance, the deliveries or services will be considered as accepted upon expiration of this period.
- 6.2 The deliveries and services will also be considered as accepted, as soon as the Ordering Party has put the delivered item into use for longer than a week without reporting defects. This does not apply if the usage was unavoidable for the Ordering Party due to special circumstances.
- 6.3 If the deliveries are to be subjected to an acceptance test, such tests, unless otherwise agreed, are to be performed at the premises of the Contractor. Acceptance has occurred, if the Ordering Party has not raised justified and substantial objections by the end of the acceptance test.
- 6.4 If the Ordering Party decides that an acceptance test is not required, or, despite being notified in good time, is not present at the acceptance test for reasons for which the Contractor cannot be held responsible, the test performed by the Contractor will be considered as a valid acceptance test.
- 6.5 The costs for the acceptance test are borne by the Ordering Party.
- 7 Passage of risk**
- 7.1 Passage of risk in the case of deliveries
- a. Provided that complete delivery has not been expressly agreed upon, the Contractor is entitled to perform partial deliveries, unless this conflicts with justifiable interests of the Ordering Party.
- b. In the case of an Ex Works delivery, the risk of chance destruction or chance deterioration of the goods and the risk of delay are transferred to the Ordering Party as soon as the goods have been made ready for picking up by the Contractor at the agreed place. If it has been agreed that the goods should be sent by the Contractor, the above risks are transferred to the Ordering Party with the handing over the goods to the forwarder or other persons used to effect the shipping.
- c. If the Contractor accepts items of the Ordering Party for safekeeping, custody is at the expense and risk of the Ordering Party. If not otherwise agreed, the Ordering Party has to pay the Contractor the price customarily charged by a commercial warehouse keeper for the storage of goods. If the Ordering Party is in default with acceptance, only numbers 5.2 and 5.3 of these Conditions apply.
- d. If acceptance of the items to be delivered is agreed, the acceptance is only the point in time of the passage of risk if an agreement for work is involved.
- 7.2 Passage of risk in the case of services
- 7.2.1 Passage of risk in the case of services provided on-site
- a. The risk of chance damage or chance loss of the subject matter of the service, as well as of the chance deterioration of the work, is with the Ordering Party in the case of performance in situ, whether it is in connection with a previous delivery of the Contractor or without such a previous delivery.
- b. Items and materials supplied by the Ordering Party will be taken care of by the Contractor in accordance with the applicable terms of the agreement. The risk of accidental loss and accidental deterioration of the items and materials remains with the Ordering Party. Damage to these objects and materials for which the Contractor is liable is covered by number 12.
- c. If the Ordering Party does not accept the offer of the Contractor for a trial run or the transfer of the object of performance into its own operations, the risk for the duration of the delay will pass to the Ordering Party 14 days after this offer has been made.
- d. If events beyond the control of the Contractor cause the commencement of the work to be delayed, interrupted or stopped by more than 14 days after commencement of the work or if the commencement of the work is delayed by such events, the risk of services already provided will pass to the Ordering Party for the duration of the delay, interruption or stoppage.
- 7.2.2 Passage of risk in the case of services performed at the works of the Contractor
- a. If the service is performed at the premises of the Contractor or his assistants, the Ordering Party has to submit the subject matter of the service in good time and at its own expense and risk to the Contractor.
- b. If items belonging to the Ordering Party have been taken over by the Contractor, these items are to be returned to the Ordering Party at its expense and risk upon completion of the service.
- c. If the return of these items to the Ordering Party is delayed for reasons for which the Ordering Party is responsible, or if these items, upon request by the Ordering Party, are returned later than the agreed completion date, the risk passes to the Ordering Party on the day the Ordering Party was notified about the readiness for return of these items. The same applies in the case of delays or hindrances caused by an Act of God or other events or circumstances beyond the control of the Contractor.
- d. If collection instead of return was agreed, the Ordering Party, after performance of the service, has to collect the items within 14 days after being notified accordingly. If the Ordering Party fails to collect the items, the risk of chance destruction or chance deterioration is transferred to the Ordering Party upon the expiry of a 14 day period and the Contractor has the right to return the goods without further notice at the expense and risk of the Ordering Party.
- 8 Retention of title to ownership**
- 8.1 The Contractor retains the title to the ownership of the items delivered by him until all payments resulting from the corresponding supply agreement with the Ordering Party have been made, including all extensions of the scope of supply and all options. In the event of a violation of the agreement by the Ordering Party, especially in the case of delay in payment, the Contractor has the right, if the statutory prerequisites are present, to withdraw from the contract and to demand the delivered goods (hereinafter referred to as "Conditional Commodity") as a result of the withdrawal. The Contractor's demand for return of the Conditional Commodity in all cases constitutes a termination of the agreement. After taking back the conditional commodity, the Contractor is free to dispose of it, with the proceeds of the sale being offset against the accounts payable by the ordering parts, less reasonable sales costs.
- 8.2 The Ordering Party has to treat the Conditional Commodity with care and to adequately insure it at its reinstatement value against damage by fire and water, as well as against theft. Inasmuch as servicing is necessary the Ordering Party has to carry this out at its own cost.
- 8.3 The Ordering Party has to notify the Contractor in writing without delay, in the case of attachment or any other interference by third parties. If the third party is not in a position to reimburse the Contractor for the legal costs and out-of-court expenses of a law suit in accordance with Article 771 of the Code of Civil Procedure, the Ordering Party is liable for the loss incurred by

- the Contractor.
- 8.4 The Ordering Party has the right to sell the conditional commodity as part of its ordinary course of business. At this point in time the Ordering Party already assigns to the Contractor all claims amounting to the final sum of the invoiced amount (including turnover tax) arising against its buyers or third parties, irrespective of whether the Conditional Commodity has been resold without processing or after processing. Even after the assignment, the right of collection remains with the Ordering Party. The Contractor undertakes, however, not to collect any claims, as long as the Ordering Party meets its payments obligation in relation to the Contractor, does not default in payment, and, as long as no petition in bankruptcy or for insolvency proceedings has been filed, or payments have been stopped. Should this be the case, however, the Contractor has the right to demand that the Ordering Party provides information regarding the assigned claims and their debtors, provides all details required in connection with the collection, hands over the associated documents and informs the debtor (third party) of the assignment.
- 8.5 If the Conditional Commodity is sold together with other items without an individual price having been agreed for the Conditional Commodity, the Ordering Party assigns to the Contractor that part of the total price claim, with precedence over the remaining claims, that is equivalent to the price of the Conditional Commodity invoiced by the Contractor.
- 8.6 Processing or modification of the Conditional Commodity by the Ordering Party is, in all cases, effected on behalf of the Contractor. If the Conditional Commodity is processed together with other items not belonging to the Contractor, the Contractor acquires joint ownership of the new objects in proportion to the value of the Conditional Commodity to the value of the other processed objects at the time of processing. The objects resulting from the processing operations are subject to the same terms as the items conditionally supplied.
- 8.7 If the Conditional Commodity is inseparably mixed with items not belonging to the Contractor, the Contractor acquires joint ownership of the new items in proportion to the value of the Conditional Commodity to the value of the other mixed items at the time the mixing occurred. If the items are mixed in such a way that the items of the Ordering Party constitute the predominant part, it is agreed that the Ordering Party transfers joint ownership to the Contractor on a pro rata basis. The Ordering Party holds the sole or joint ownership in safe custody for the Contractor.
- 8.8 The exploitation provisions of the insolvency regulations remain unaffected.
- 8.9 The Ordering Party also assigns to the Contractor the claims safeguarding our claims against the Ordering Party, arising from the connection of the Conditional Commodity with real estate or a vessel against a third party.
- 8.10 Upon request by the Ordering Party, the Contractor undertakes to release the securities to which he is entitled, insofar as the value of our security exceeds the claims to be secured by more than 10 per cent. The choice of the securities to be released is left to the discretion of the Contractor.
- 8.11 If the above ownership clauses are void under the laws of the country in which the object of delivery is present, it is as a minimum deemed as agreed that the ownership in the object of delivery remains with the Contractor until payment of the respective delivery invoice. If this is also void, but the law of the country in which the object of delivery is present allows the Contractor to retain other security rights in the object of delivery, the Contractor is allowed to exercise all rights of this type. The Ordering Party is obliged to cooperate with the Contractor's measures which it takes in order to protect its ownership right in the object of delivery or the law taking place of these measures.
- 9 Payments**
- 9.1 All payments of the Ordering Party to the Contractor must be settled, without any deduction, within 14 days after receipt of the respective invoice. The Contractor has the right to effect partial accounting. Time limits for payments are deemed to have been observed when the Ordering Party can dispose of the paid amount within the time stipulated.
- 9.2 Payments made by the Ordering Party to the personnel of the Contractor do not absolve the Ordering Party from its debts. Exceptions require a special agreement in writing.
- 9.3 If at all prepared to do so, the Contractor will accept bills of exchange only if agreed beforehand in writing, and only with the proviso of their discountability and on account of performance. All discount charges and other incidental expenses are to be borne by the Ordering Party and are to be reimbursed immediately. Crediting of the amounts of bill of exchange and cheques is effected only after the equivalent amount is unconditionally available to the Contractor.
- 9.4 If, in the event of a delivery abroad, a transfer of payment is impossible from the country from which the payment is to be made at the time of it falling due, the Ordering Party still has to an equivalent amount to the sum owed into a bank in this country on time. In the event of a deterioration of the exchange rate of the currency not agreed upon for the paid in sums, the Ordering Party has to settle the difference with a later payment.
- 9.5 If the Ordering Party is in full or partial payment default, the Contractor has the right to charge, as from the second reminder, an expense allowance of EUR 5.00 per reminder covering the administrative costs involved.
- 9.6 The Contractor, in the event of payment default, is entitled to charge interest on arrears amounting to an annual rate of 8 percentage points above the respective base interest rate. The Contractor retains the right to further claims.
- 9.7 If the Ordering Party stops its payments, is overloaded by debts, or if a petition for insolvency or bankruptcy proceedings is filed, or if the Ordering Party is in default with several financial obligations, the total claim of the Contractor from ongoing contracts becomes due immediately.
- 9.8 In the cases set out under number 9.7 the Contractor has the right to demand the lodging of adequate security by the Ordering Party.
- 10 Assignment / set off / withholding delivery**
- 10.1 With the exception of monetary claims, the Ordering Party is not entitled, without prior written agreement, to transfer claims against the Contractor to third parties.
- 10.2 The Ordering Party can assert offset rights only, if its counterclaims are legally valid, undisputed or recognised by the Contractor.
- 10.3 The Ordering Party is only entitled to exercise its right of retention or its right of refusal to perform if for its counterclaims the same preconditions as set out under number 10.2 are fulfilled or if it claims for defects in the delivered goods and these defects have been established and recognized by the Contractor, or at least satisfactory evidence has been furnished by the Ordering Party (for instance in the form of a written confirmation issued by an independent and qualified person), and, if apart from this, its counterclaim is based on the same contractual relationship.
- 10.4 The Contractor has the right to assert his set off right and right of retention to the extent permitted by statute.
- 11 Liability for defects**
- In the event of defective deliveries or services, the following applies:
- 11.1 The defect claims of the commercial Ordering Party require, in the case of a delivery in the meaning of number 1.5 of these conditions, that the Ordering Party, without delay, but at the latest within 12 days, after taking delivery, makes a complaint to the Contractor in writing in relation to recognisable defects. Hidden defects are to be the subject of a complaint in writing by the Ordering Party without delay following their discovery (Article 377 German Commercial Code).
- 11.2 There are no claims for defects if there are only insignificant deviations from the properties of the delivery or service agreed upon or if there is only insignificant impairment of the usefulness.
- 11.3 If The Ordering Party carries out performance measures in order to prove a defect, they will only be recognised by the Contractor if the performance tests are carried out in the presence of a representative delegated by the Contractor for this purpose, with the Contractor reserving the right to check the object of delivery or service and the associated process sequences itself.
- 11.4 In the event of a defect in the object of delivery or service, the Ordering party first of all has to give the Contractor the opportunity to remove it within a reasonable period to be laid down by the Ordering Party at the choice of the Contractor by means of free improvement, renewed service provision or new delivery, whereby the Contractor has at least two attempts at achieving contractual fulfilment.
- 11.5 Subject to the rules in numbers 11.6 and 11.7 below, the Contractor bears the costs which are necessary for the purpose of achieving subsequent fulfilment of the contract, in particular transportation, labour and material costs, unless the subsequent performance brings with it disproportionate costs for the Contractor.
- 11.6 By way of derogation from number 11.5, the Contractor does not have to bear the costs for subsequent performance to the extent that the expenditure increases due to a subsequent movement of the object delivered to a place different to the place of delivery (place of performance) and the Contractor can demand reimbursement of these additional costs from the Ordering Party, unless the movement corresponded with the common use of the object of the delivery and service in accordance with the provisions.
- 11.7 The costs of the dismantlement and reinstallation of the object of delivery are not a part of the necessary expenditure for the purpose of subsequent performance in accordance with number 11.5 above in the case of purchase agreements and contracts for work and materials. This does not apply, however, if the installation of the object of the delivery is a part of the Contractor's contractual duties from the purchase or work and materials agreement.
- 11.8 If the subsequent performance has failed or if the reasonable time limit to be set by the Ordering Party under number 11.4 has expired without a result or is superfluous under the statutory provisions, the Ordering Party can request a reduction in price or can withdraw from the contract and request compensation. The enforcement of compensation is, however, only possible in line with number 12 of these Conditions.
- 11.9 In the case of a contract for services, the Ordering Party is, in addition to the rights set out under number 11.7 above and under the prerequisites laid down there, entitled to remedy the defect itself and to request the reimbursement of the necessary expenses from the Contractor.
- 11.10 The Contractor's liability for defects does not cover defects which are attributable to items and materials provided by the Ordering Party, or the performance of the personnel of the Ordering Party, or third parties acting on its behalf. The liability for defects furthermore does not cover defects or faults which were caused by the interference of the Ordering Party or of third parties. The Contractor is only liable for faulty work of the personnel provided by the Ordering Party if such work is demonstrably the result of incorrect instructions given by the Contractor, or due to grossly negligent violation of his supervisory duty.
- 11.11 No liability on the part of the Contractor is accepted for damage or defects to the object of delivery or service resulting from the following causes: Unsuitable or incorrect use by the Ordering Party or third parties, incorrect assembly or commissioning by the Ordering Party or third parties, natural wear, misuse or negligent use by the Ordering Party or third parties, the use of unsuitable operating material or unsuitable replacement materials or



- faulty construction work by the Ordering Party or third parties, unsuitable building ground, chemical, electro-chemical, electric or environmental influences, respectively to the extent that the damage or defect is not caused due to a mistake committed by the Contractor.  
No liability is accepted for the consequences of incorrectly performed modification or overhaul operations to/on the object of delivery or service by the Ordering Party or third parties, or in the case of broken lead seals.
- 11.12 If, for any reasons beyond the control of the Contractor, the Ordering Party unjustly complains about a defect for which the Contractor is responsible, the Contractor has the right to request reimbursement from the Ordering Party for expenses incurred by it in the rectification or establishment of the defect.
- 11.13 By way of derogation from Article 438 Section 1 no. 3 German Civil Code and Article 634a Section 1 no. 1 German Civil Code, the Ordering Party's claims for defects are time barred after one year for cases coming within those provisions, starting from delivery or, if an acceptance is agreed upon or provided by law, starting from acceptance.
- 11.14 If the delivery or service in the meaning of these Conditions is construction work or an object which, corresponding to its normal use is used for construction, and has caused the defective nature of the construction or it is a service, the success of which exists in the provision of planning and supervision services for construction, the statutory limitation period of five years always applies (Article 438 Section 1 no. 2 German Civil Code, Article 634a Section 1 no. 2 German Civil Code). Statutory special rules for in rem rights to restitution of third parties (Article 438 Section 1 no. 1 German Civil Code), in the case of bad faith by the Contractor and for claims in supplier recourse actions in the case of the final delivery to a consumer (§ 479 German Civil Code) also remain unaffected.
- 11.15 The above provisions for the start and the duration of limitation periods as set out in numbers 11.13 and 11.14 apply in the same way to all contractual and also to all non-contractual compensation claims on the part of the Ordering Party which are based on a defect in the object of the delivery or service, unless the application of the regular statutory limitation period (Articles 195 and 199 of the German Civil Code) would result in a shorter limitation period in the individual case.
- 11.16 Insofar as the provisions in numbers 11.13 to 11.15 above deviate from the statutory limitation periods, this does not apply to the Ordering Party's compensation claims for which the Contractor is liable without limitation under number 12.
- 11.17 In the case of legal infirmities the following also applies: If not otherwise agreed, the Contractor is obliged to perform the delivery or service in the country of the place of delivery/performance free from any rights of third parties.
- 11.18 In the event of an infringement of an industrial property right of a third party, for which the Contractor is responsible, he has the option of either obtaining and granting, at his own expense, the right of use for the agreed or intended use, or to alter the delivered item in such a way that the industrial property right is not infringed, or to change the delivered item, provided this will not impair the agreed or intended use of the delivered item by the Ordering Party. If this is not possible for the Contractor, or cannot be reasonable asked of him, the Ordering Party is entitled to its legal claims and rights. Claims for damages are covered by number 12.
- 11.19 The performance of the obligation under number 11.18 by the Contractor presupposes that the Ordering Party notifies the Contractor, without delay, about any claims made by third parties against him resulting from industrial property rights, and that the Ordering Party, in dealing with such claims and pursuing its right, acts in concert with the Contractor. If any of these preconditions is not met, the Contractor will be freed from his obligation.
- 11.20 Nor is the Contractor liable for the infringement of industrial property rights of third parties in connection with a delivered item that was manufactured to drawings, developments or other data of the Ordering Party. The Ordering Party in this case has to hold harmless the Contractor against the claims of third parties.
- 11.21 If the Ordering Party alters the delivery item, or auxiliary installations, or the connection of the delivery item with other devices or facilities thus infringing the industrial property rights of third parties, no liability is due on the part of the Contractor.
- 12 Liability / Damages**
- 12.1 The Ordering Party's claims for compensation and expenses, no matter for what legal reason, specifically based on breaches of obligations under the contractual relationship and unlawful acts only exist in line with the following provisions:
- 12.2 The Contractor is liable in accordance with the statutory provisions for damage/loss to life, body and health caused culpably by the Contractor, its legal representatives or its assistants in performance and in the case of wilful misconduct or gross negligence by itself or its legal representatives or its assistants in performance. The Contractor is furthermore liable in accordance with the statutory provisions in the case of bad faith, also by its legal representatives or its assistants in performance and to the extent that the Contractor has given a guarantee for the properties of the object of the delivery or service. The same applies to claims as against the Contractor under the Product Liability Act.
- 12.3 If there is no event which falls within the above number 12.2, the Contractor's liability for all loss and costs incurred by the Ordering Party in the case of simple negligence is excluded, unless the Contractor has culpably breached a material duty. Material duties are those whereby only with their fulfilment is a normal execution of the contract possible and on the fulfilment of which the Ordering Party has relied and was entitled to rely.
- 12.4 If the Contractor is liable in accordance with the above number 12.3 due to simple negligence of material duties, the liability is limited to the amount of damage which is typical foreseeable for such a contract.
- 12.5 As far as the liability of the Contractor in accordance with this number 12 is excluded or limited, the same applies to the individual liability of the employees, representatives and assistants of the Contractor.
- 12.6 The limitation period for the Ordering Party's claims for compensation and/or expenses which are based on a defect in the object of the delivery or service are exclusively governed by the provisions in numbers 11.13 to 11.16. For all other cases the statutory limitation period applies to the Ordering Party's claims for compensation and expenses under this number 12.
- 12.7 The Ordering Party, by taking suitable and reasonable safety measures, especially supervising measures, ensures that any possible damage caused by a delivery or service by the Contractor is kept to a minimum.
- 12.8 There is no reversing of the statutory burden of proof with the above rules in this number 12.
- 13 Confidentiality**
- 13.1 As long as not part of the public domain, both parties undertake to treat as confidential all documents and information they have gained access to in the course of the execution of the agreement.
- 13.2 This obligation remains in force also after the termination of an agreement and in the event of an admissible submission of documents and information to third parties has also to be imposed on such third parties.
- 14 Jurisdiction / Governing law**
- 14.1 If the Ordering Party is a merchant, the place of jurisdiction for all disputes arising directly or indirectly out of or in connection with any contractual relationships – also in connection with documents, bills and cheques – is Hamburg exclusively. The Contractor has the option, however, to assert his claims against the Ordering Party at a law court in whose jurisdiction the residence, offices or assets of the Ordering Party are located.
- 14.2 The law of the Federal Republic of Germany shall apply, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (UNCITRAL/CISG).
- 15 Partial ineffectiveness**
- If individual provisions of an agreement relating to deliveries and services become inapplicable, the effectiveness of the remaining provisions of the agreement will not be affected.