Sales and Delivery Conditions of BENZ GmbH Werkzeugsysteme

No. 01/2025

Valid from January 01st, 2025

I. General, scope

(1) These SALES AND DELIVERY CONDITIONS of Benz GmbH apply exclusively for all quotes, deliveries and other services of all companies of Benz GmbH. German companies of Benz GmbH are all those companies that are affiliated with Benz GmbH in line with Paragraph 15 et seq. of the German Stock Corporation Act and have their registered location in Germany. Conflicting confirmations of the Customer that refer to the Customer's own terms and conditions are excluded. Different or alternatively worded terms and conditions of the Customer shall only be deemed an integral element of the contract if explicitly recognized by us in writing. Our SALES AND DELIVERY CONDITIONS of Benz GmbH also apply for all future quotes, deliveries and other services to the customer, even if they are not expressly agreed again.

II. Contractual documents, conclusion of contract, duty of notification of the Customer

(1) Our quotations (quotes) are non-binding, provided that they are not explicitly identified as binding in writing or include a specific acceptance term. This also applies if we have handed over drawings, plans, catalogs, samples, cost estimates and other documents, possibly including software, to the Customer.

(2) A contract comes into existence in the case of a written quote that is identified by one of us as binding, or that has a specific acceptance term, with a timely signature of this quote by the Customer; in all other cases, only with our written order conformation or signature by both parties of a written contract.

(3) The minimum order value is EUR 50 net.

(4) We retain all proprietary rights, copyrights and industrial property rights (including the right to register such rights) on all drawings, plans, catalogs, samples, cost estimates and other documents, as well as software, which we provide to the Customer before or after conclusion of the contract. The above-mentioned documents, in particular quotes and order confirmations, as well as the software, are confidential, may only be used for the completion and execution of the appropriate contract between us and the Customer (intended purpose) and may only be made accessible to third parties with our prior written agreement. The requirement for confidentiality and the ban on use outside the intended purpose also applies if no contract comes into existence and remains in place after the end of the supply contract, irrespective of the way in which the contract comes to an end.

(5) If a contract is not concluded between us and the Customer, any documents and software already handed to the Customer must be returned to us in their entirety at the first request. The Customer must ensure here, and confirm to us in writing, that the Customer has no copies, duplicates, films, recordings on data carriers and that such items have also not been forwarded to third parties. A right of retention by the Customer of the documents and software demanded to be returned to us is—irrespective of the legal reasons—excluded.

(6) Before the contract is concluded, the Customer must inform us in writing if the requested delivery object

- is to be used for any purposes other than its intended use,
- will be used in unusual conditions or in conditions that place higher demands on the object or which represent an increased risk of personal injury, an increased hazard, or could damage the environment
- is intended for processing unusual materials.

(7) A guarantee for the suitability of the delivery object for a specific use only exists if we have assured such a suitability in writing in the contract.

III. Scope of delivery, right to make amendments

(1) The content and scope of our duty of supply is exclusively determined by the content (i) of the written quote identified by us as binding or with a specific acceptance term, (ii) our written order confirmation or (iii) the written contract signed by both parties. All details relating to the delivery object in catalogs, product descriptions, data sheets, plans, quotes, drawings, in the specification, in particular details of availability, performance data, quantity, dimensions, use, color, etc., are unbinding; they only become a legally binding component of the contract if and to the extent that (i) the written quote identified by us as binding or with a specific acceptance term, (ii) our written order confirmation or (iii) the written contract signed by both parties explicitly refers to this; details and features here are only assured properties if they are explicitly identified as such in writing.

(2) Certain delivery objects can be delivered as "tapio ready". This means that these delivery objects are equipped with a device that technically permits the use of quotes in connection with the delivery object, which are provided on the digital platform "tapio" for the value creation chain in the wood-processing industry. This does not entitle the Customer to make a claim to the use of quotes provided on the tapio platform. The requirement for this is the registration of the Customer on the tapio platform, the authorization of the Customer by the platform operator, the acquisition of a specific quote intended for the delivery object and the appropriate activation of the delivery object. If these requirements are not met, the "tapio ready" functionality only works to the extent that when switching on the delivery object, a connection is automatically made to the agency service of the tapio platform, in order to check using the machine number of the delivery object whether this has already been activated for use on a quote provided on the tapio platform.

(3) Additional agreements and additions/changes to the contract are only effective if and insofar as they are confirmed in writing.

(4) If the applicable law or the state of the art changes during the term of the supply contract and makes it necessary to change the scope of the delivery or service, we will inform the Customer of this. If, as a result, a change to the scope of delivery and service is either required legally or is desired by the Customer, an addendum will be worked out. We are entitled to ask for an extension to the contractually agreed schedule. In addition, we are entitled to claim for the reimbursement of additional costs for changes desired by the Customer. We will inform the Customer without delay about the arising scheduling and cost implications and forward a follow-up quote. We are under no obligation to provide the service or delivery if no agreement has been reached about the follow-up quote.

(5) We reserve the right to make changes to the design and material, providing that such changes do not significantly impair the normal use of the delivery object or the use as set out in the contract, and providing that the Customer would reasonably be expected to accept such changes.

(6) In the case of a delivery object that is manufactured according to Customer requirements, and which is not a standard product produced by us (special designs), the corresponding documentation may differ from our standard documentation as used throughout Benz GmbH. In particular, the scope, form and function of the documentation may be different or less extensive.

IV. Prices, payment

(1) Unless explicitly agreed otherwise in writing, prices are Ex Works (Incoterms 2020, factory premises of Benz GmbH in 77716 Haslach, Germany). Ancillary costs, including packaging, shipment, insurance, as well as value-added tax and all other taxes and duties, are not included. Costs of packaging, shipment and insurance expressly requested by the Customer will be charged separately at the prices applicable on the day of delivery. If, by way of exception, we take on the unloading of the delivery object and its transfer to storage at the delivery location, we may demand, in addition to the agreed price, the costs incurred by the customer for the unloading and transfer.

(2) The quoted prices only apply for the respective single order. The agreement of a fixed price requires explicit written agreement.

(3) The payment conditions agreed with the Customer apply. Payment must be made in the currency specified in our quote or our order confirmation. Unless explicitly agreed otherwise in writing, invoices must be paid in full in advance.

(4) All payments are to be paid to the account specified on our invoice in full and without any deductions or charges. Regardless of the means of payment, the payment will only be deemed accepted when the full amount on the invoice has been credited irrevocably to our account so that we have access to it (receipt of payment). The Customer is liable for any additional costs incurred through the choice of a particular means of payment.

(5) If the Customer misses paying the purchase price within an agreed period after the invoice date, or within a deviating payment deadline that has been explicitly agreed in writing, we can demand interest at 9% per annum above base rate without needing to issue an overdue notice and without prejudice to other remedies. We reserve the right to submit proof of more substantial damages. Our rights from Section VI. (1) remain unaffected.

(6) Offsetting by the Customer is only permissible in relation to legal claims by the Customer that are recognized by us or found to be legally binding. Any rights of retention of the Customer are, if legally permitted, excluded.

(7) In the case of agreements for part payment, the entire outstanding amount, including all the bills of exchange that are not yet due, are immediately due for payment if the Customer

a) falls into arrears for one installment by at least 14 days or

b) falls into arrears for at least two installments in full or in part and the outstanding amount is 10% or more of the purchase price or
c) has suspended payments or is affected by an insolvency application relating to the Customer's assets or by a process abroad that is the equivalent to an insolvency application in purpose and effect.

For the outstanding amount due, the Customer must pay interest at 9% per annum above the base rate.

V. Delivery date, delay in delivery, frustration, credit worthiness, acceptance of the delivery object

(1) The delivery date will be as decided by the contractual parties. Compliance with the delivery date requires the Customer to provide all required documents in good time, and to fully answer all technical and commercial questions and to explain in full any details regarding the requested design, including the approval of drawings and other plans. If these requirements are not met on time, the time limits and deadlines will be extended appropriately by us. The delivery date does not include the period where the Customer is in arrears with an agreed payment, i.e. the delivery date will be extended by the period in which the arrears are in place.

(2) Unless explicitly agreed otherwise in writing, the delivery date is met if we inform the Customer that the item is ready for shipment before the delivery date or the delivery object has left the factory.

(3) The delivery date shall be extended accordingly if we are unable to meet our delivery obligations, or unable to meet our delivery obligations on time, owing to circumstances or extenuating factors beyond our control and which were not reasonably foreseeable at the time the contract was concluded. Extenuating factors beyond our control include, in particular, untimely or incorrect deliveries to us by our suppliers, acts of God, industrial disputes or delays in the receipt of state approvals. We will inform the Customer as promptly as possible when such extenuating factors have begun and are expected to end. If such delays last longer or will last longer than six months, both we and the Customer are entitled to dissolve the contract. In all these cases, any liability for damages to the Customer is excluded. Any payments made in advance by the Customer will be reimbursed without delay.

(4) If, due to a circumstance for which we are answerable, we are culpably responsible for a delay, and if the Customer has granted a period of grace of at least 21 days, then within a further two calendar weeks—calculated from the last day of the set grace period—the Customer is entitled to declare withdrawal from the contract. If the Customer does not exercise this right in writing within this period, or if we are ready to deliver before the withdrawal declaration is received from the Customer, then the Customer loses the right to claim for withdrawal from the contract (= forfeit).

(5) Any further contractual or non-contractual claims, namely any claims for liability or damages, from the Customer against us due to delay in delivery—irrespective of whether the delay in delivery is our fault or not—are, if legally permitted, excluded.

(6) The exclusion of claims for liability or damages in Section V. (5) applies explicitly for property damages and consequential damages, in particular for loss of profit, production stoppages, business interruption, loss of financial assistance and needless expenses.

(7) The Customer can only withdraw from the contract due to partial frustration if the partial delivery is proven to be of no interest for the Customer. If this is not the case, the Customer must pay the contract price for the partial delivery. If frustration occurs during the delay in acceptance or at the fault of the Customer, the Customer continues to be obliged to pay the full amount. If the frustration is not the fault of either us or the Customer, we can make a claim for the corresponding part of the payment for the partial delivery we have made. Apart from that, Section XI applies.

(8) If, after the conclusion of the contract, we become aware of circumstances that lead us to have reasonable doubts about the Customer's creditworthiness or ability to pay and there is a risk that payments that are due to us under the contract will not be made, we have the right to cease our services until such time that the payment is made in accordance with the contract or security is provided for the payment, and the Customer has discharged any other claims to the companies of Benz GmbH.

(9) Unless otherwise agreed in writing, the Customer is obliged to take delivery of the delivery object within ten days following receipt of notification from us that the delivery object is ready in our plant. If this acceptance period is exceeded by more than five days, we are entitled to arrange shipment of the delivery object to the Customer and the associated formalities at the Customer's cost. Non-acceptance of the delivery object does not absolve the Customer of the obligation to pay the purchase price. At our choice, instead of making the shipment to the Customer, we can also dispose of the delivery object in a different way and deliver a replacement delivery object to the Customer with a suitably extended notice period. The following rulings from Section VI. relating to delay in acceptance remain reserved.

VI. Delay in acceptance, postponement to the delivery deadline at the request of the Customer

(1) If the Customer is delayed in the acceptance of the delivery object or is in arrears with payment, we are entitled to withdraw from the contract after setting an appropriate grace period and/or to request damages due to non-fulfillment. On enforcement of claims for damages owing to non-fulfillment, we are entitled—without the need for proof—to demand compensation of

- 20% of the purchase price, providing the delivery object is a standard or mass-production product, or
- 100% of the purchase price, if the delivery object is a unique product according to the specific requests of the Customer.

We remain free to prove and assert a higher level of actual damages. This is also without prejudice to regulations stipulated by law that apply for ascertaining damages if the contract has already been completely fulfilled by us. The Customer is permitted to prove that no damage has been incurred by us or that the damage was substantially less.

(2) Moreover, we are also entitled to charge for incurring additional work, in particular warehousing costs, in the event that the Customer delays acceptance. If we store the delivery object at a third-party warehouse, we are entitled to invoice the Customer the storage costs from the third party and to demand the transport costs to the storage location. If we store the delivery object at our own premises, we are entitled, without providing proof, to demand storage fees from the Customer amounting to 0.1% of the purchase price, up to a maximum of 5% of the purchase price, for each commenced week of the delay in acceptance or the postponement. We reserve the right to prove a higher level of damages. The Customer is permitted to prove that no damage has been incurred by us or that the damage was substantially less than the flat-rate storage fee ruling.

(3) If, in the case of a delay in acceptance or payment arrears of the purchase price by the Customer, we demand damages in addition to the service, or we postpone shipment at the request of the Customer, we are also entitled to demand payment from the Customer for additional expenditure, in particular storage costs, in line with the preceding paragraph.

VII. Delivery, transfer of risk and insurance

(1) Partial deliveries by us are permissible, as long as the parties have not excluded these in writing.

(2) Unless otherwise explicitly agreed in writing, the delivery always occurs Ex Works in line with Incoterms (2020, factory premises of Benz GmbH, 77716 Haslach, Germany), so that in particular all the transport and customs costs are to be borne by the Customer and the risk of accidental loss is transferred to the Customer at the point in time when the shipment is ready for dispatch in our factory.

(3) Unless otherwise explicitly agreed in writing, delivery "Ex Works" in line with Incoterms (2020, factory premises of Benz GmbH, 77716 Haslach, Germany) also applies as agreed if the transport is organized by us.

(4) If, instead of delivery "Ex Works" in line with Incoterms (2020, factory premises of Benz GmbH, 77716 Haslach, Germany), other delivery conditions are agreed, in particular other Incoterms conditions, then unless otherwise explicitly agreed in writing, the risk is still transferred to the Customer at the latest at the point in time when the first carrier receives the delivery object.

(5) If the shipment or the transportation of the delivery object is delayed owing to circumstances for which we are not liable, the transfer of risk shall be deemed to have passed to the Customer at the latest as soon as the Customer has been informed that the delivery object is ready for collection, irrespective of the agreed delivery conditions.

(6) Irrespective of the agreed delivery conditions—if not explicitly expressed in writing in the order confirmation—the unloading and the transport of the delivery object from the unloading location to the installation location are not our responsibility.

(7) At the request of the Customer, all shipments will be insured from transfer of risk to the full and complete payment of the purchase price at the Customer's cost. In the event of damage, we will successively transfer claims from the insurance to the Customer in return for performance of the contractual services of the Customer (including compensation of the insurance premium). If the Customer does not want us to take out such insurance, the Customer must ensure that the delivery object is insured from the transfer of risk to the full and complete payment of the purchase price at the as-new value. If the Customer does not prove at the latest 10 days after conclusion of the contract that such an insurance has been taken out in the Customer's name and at the Customer's cost, we are entitled to take out the stated insurance contracts at the cost of the Customer, to which the Customer grants irrevocable authorization.

VIII. Retention of title, provisional right of redemption

(1) The delivery object remains our property until the Customer has discharged all claims, even if the physical delivery object has been paid for. With the conclusion of the supply contract, the Customer authorizes us to announce the retention of title.

(2) While the retention of title is in place, the Customer is not permitted to pledge the delivery object or use it as security, and the resale or transfer as well as the rental or other handing over of the delivery object to third parties is only permitted following our prior written agreement and while maintaining our retention of title. The Customer must handle the delivery object with care. The Customer must inform us immediately in writing of any seizures, confiscations or other dispositions or interventions made by third parties that could lead to the loss of our rights over the delivery object.

(3) In the case of arrears in payment, or if the customer breaches other essential contractual obligations, we are entitled to a provisional right of redemption of the delivery object until the arrears amount has been paid or the infringement of the essential contractual obligation has been rectified. The exercising of the right of redemption does not constitute a withdrawal from the contract.

(4) The Customer already assigns to us as security, in the case that the delivery object is resold, the receivables from its customers that arise from the stated transactions until all our demands have been satisfied. Benz GmbH herewith accepts the transfer of these rights.

(5) If the delivery object is processed, reshaped or connected with another item, we immediately acquire ownership of the manufactured item to the level of the value of the delivery object. The manufactured item is considered to be reserved goods.

(6) If the value of the insurance exceeds our claims against the Customer by more than 10%, we are obliged, at the Customer's request, to release the securities of the Customer's choice to which the Customer is entitled to the appropriate level.

(7) The agreements on the retention of title are without prejudice to the provisions governing the transfer of risk as defined by Section VII.

IX. Notification of defects and warranty

(1) The Customer may only refuse to accept the delivery object if the delivery object is manifestly and seriously defective or if there is a substantial deviation in quantity. Such refusals must be advised immediately in writing, stating the reasons. The Customer loses the right to refer to obviously identifiable defects in the delivery object and/or the documents during an investigation if this is not advised to us immediately in writing and in so doing the type of defect, if possible without substantial expense, is described precisely, irrespective of which reasons the Customer gives for not meeting these requirements. The written notification of defects by the Customer must be sent within the notice period stated above; in addition, it is necessary for us to actually receive the notification of defects that is sent to us on time. The Customer must therefore prove that the notification of defects was sent and received by Benz GmbH on time.

(2) A hidden defect must be notified to us immediately by the Customer in writing. The Customer loses the right to refer to a hidden defect if this is not advised to us in writing within this notice period and in so doing the type of defect is described precisely, irrespective of which reasons the Customer gives for not meeting these requirements. The written notification of defects by the Customer must be sent within the notice period stated above; in addition, it is necessary for us to actually receive the notification of defects that is sent to us on time. The Customer must therefore prove that the notification of defects was sent and received by Benz GmbH on time.

(3) If it is not possible to identify any defects in the delivery object, following a notification of defects from the Customer, the Customer must reimburse us all costs that were incurred as a result of checking the delivery object.

(4) If the delivery object or documentation is found to be defective, we are entitled to remedy this situation or to effect a replacement delivery at our sole discretion. If the Customer does not give us the opportunity to do this, we are not liable for the associated consequences. If the defect in the delivery object or the documentation is not remedied within a suitable period by rectification or replacement delivery, the Customer can—following the fruitless lapse of a further suitable grace period of at least 28 days as specified in writing—demand a reduced value of the delivery object by appropriately reducing the purchase price. In the case of a defect to the delivery object or the documentation, the Customer does not have the right, instead of reducing the purchase price, to demand that the contract is canceled or to withdraw from the contract. All other defect rights, demands and rights of the Customer for defect rectification, all liability and claims for damages as well as all other contractual and non-contractual claims of the Customer to us are excluded within the framework of what is legally permissible.

(5) Unless there is a deviating written contractual provision, a defect is not applicable if the delivery object is not suitable for the intended purposes.

(6) Insubstantial deviation from the agreed quality, insubstantial effect to usability, unsuitable and incorrect use of the delivery object, incorrect assembly or commissioning by the Customer or by third parties not instructed by us, natural wear (in particular in the case of wear parts), defective or negligent handling of the delivery object, insufficient maintenance work, changes or additions to the delivered item carried out by the Customer or by third parties and the resulting consequences, unsuitable operating equipment and replacement materials, defective building work, unsuitable building foundations, chemical, electro-chemical, electrical or electronic influences, for which we are not responsible, do not constitute a defect. If the Customer or a third party repairs the object incorrectly, we accept no liability for the associated consequences.

(7) The limitation period for exercising claims for material defects and defects of title is—if legally permissible—deviating from the legal ruling, restricted to 12 months from the day of provision at Benz GmbH or the delivery of the delivery object to the Customer. Whichever date comes first applies in this regard. For the repairs or replacement deliveries carried out by us, the limitation period for exercising claims for material defects and defects of title is the same point in time at which the limitation period valid for the delivery object in line with this section ends. These periods apply equally for all non-contractual claims for material defects and defects of title. The prerequisite for the exercising of claims is always the previous, timely complaint in line with the preceding paragraphs (1) and (2).

(8) If not explicitly agreed otherwise in writing, we are only obliged to supply the delivery object free of industrial property rights and copyrights of third parties in the country where the delivery takes place. If the standard use of the delivery object leads to infringement of industrial property rights or copyrights in the country of delivery, we will obtain the fundamental right of further use for the Customer at our cost, or modify the delivery object in a manner acceptable to the Customer, so that the industrial property rights infringement no longer exists. If this is not possible on commercially reasonable terms or within a suitable period, the Customer is entitled to withdraw from the contract and can demand repayment of the purchase price. Under the stated prerequisites, we are also entitled to withdraw from the contract.

(9) Our obligations stated in Section IX. (8) for the case of the infringement of industrial property rights or copyrights are final. All other defect rights, demands and rights of the Customer for defect rectification, all liability and claims for damages as well as all other contractual and non-contractual claims of the Customer to us are excluded within the framework of what is legally permissible.

Our obligations stated in Section IX. (8) only exist if

- the Customer informs us immediately in writing of claims for the infringement of industrial property rights or copyrights,
- the Customer supports us to a suitable extent, at the Customer's own cost, in defending ourselves against the claims made, or permits us to make modifications in line with Section IX. (8),
- we reserve the right to all defense measures including out-of-court rulings,
- the Customer is not responsible for the infringement of industrial property rights or copyrights,
- the defect of title is not based on an instruction from the Customer and/or
- the infringement of rights was not caused by the Customer changing the delivery object arbitrarily or using it in a non-contractual manner.

If the Customer stops using the delivery object for reasons of damage reduction or other important reasons, the Customer is obliged to inform the third party that stopping usage is not connected with any recognition of an infringement of industrial property rights. Any stopping of use must first be agreed with us. If the Customer is responsible for the infringement of industrial property rights, the Customer releases us from claims from third parties.

(10) In cases of culpable responsibility for the defect by the Customer, in particular due to the non-observance of the Customer's duty of damage avoidance and damage minimization, we can make a claim for damages due to a fault contribution by the Customer.

(11) When selling a used delivery object, any claims for defects must be completely excluded, unless forcibly warranted according to law.

X. Exclusion of warranties

(1) Details in catalogs, product descriptions, project descriptions, data sheets, quotes, drawings or other documents relating to dimensions, quantity, color, use, technical data and other features, in particular with respect to availabilities, read rates, measurement accuracy, etc., include the quality and the guaranteed properties of a delivery object, however do not—unless explicitly agreed otherwise in writing—provide a guarantee (quality or durability guarantees) in the sense of Sections 443 and 639 of the BGB (German Civil Code).

(2) In the case of non-adherence to the guaranteed properties, the Customer can assert the rights against us as described in Section IX.

XI. Liability, damages

(1) If the delivery object cannot be used by the Customer in accordance with the contract as a result of non-implementation or deficient implementation of proposals or advice, for which we are responsible, or due to the culpable breach of other contractual obligations—in particular instructions for the operation and maintenance of the delivery object—then the rulings in Sections IX. and XI. (2) apply with the exclusion of further claims from the Customer.

(2) For damages that do not occur on the delivery object itself, we are only liable — for whatever legal reason:

a. in case of intent,
b. in case of gross negligence,
c. in case of loss of life, physical injury or harm to health,
d. in case of defects that we have fraudulently concealed,
e. insofar as we have taken on a guarantee,
f. in accordance with the regulations of the German Product Liability Act

or

g. in case of infringement of a material contractual obligation.

If we infringe a material contractual obligation in line with Section XI. (2) lit. g), i.e. an obligation whose fulfillment enables the proper implementation of the contract in the first place and the observance of which the contractual party regularly trusts and is entitled to expect, as well as an obligation where infringement might risk achieving the purpose of the contract, with minor negligence, then our obligation to pay compensation is restricted to foreseeable damage typical of the contract.

(3) We are not liable for property damages and consequential damages, in particular for loss of profit, production stoppages, business interruption, loss of financial assistance and needless expenses.

(4) Our liability, irrespective of the legal reason, with the exception of the cases stated in Section XI. (2) lit. a) to f), is restricted in every case to the total of the order value.

(5) In particular, the liability and damages for employees, institutions, subcontractors and any other of our helpers is also fully excluded, as far as is legally permissible.

(6) If a further liability exclusion is planned in other conditions, these conditions take precedence over the conditions in Paragraph (1) of this Section XI. Paragraph (2) of this Section XI. applies in every case.

XII. Software

(1) For the software included in the scope of supply from other suppliers, their general terms and conditions and license conditions take priority. If the Customer does not have a copy of these, we will provide them upon request. In addition, our Sales and Delivery Conditions apply.

(2) If software is included in our scope of supply, the Customer is granted a non-exclusive right to use this including its documentation. It is provided for use on the specified delivery object. Use of the software on more than one system is not permitted. The Customer can transfer the rights of use to later owners or renters of the delivery object. In the case of a transfer of the rights of use to a third party, the Customer must ensure that the third party does not grant any further rights of use for the software than those that were given to the Customer with the supply contract, and the third party must be subjected as a minimum to the existing obligations from the supply contract with respect to the software. In so doing, the Customer must not retain any copies of the software.

(3) The Customer undertakes not to remove any manufacturer information — in particular copyright notices. In addition, the Customer may only change manufacturer information following our prior written agreement.

(4) All other rights relating to the software and its documentation, including copies, remain with us or with the software supplier, unless the Customer is granted further rights due to substantial legal regulations. In particular, we are not obliged to provide software source codes. It is not permitted to grant sublicenses.

(5) Unless otherwise agreed in writing, we are not obliged to provide updated versions of the software to the Customer.

(6) Software is considered to have a material defect only if the Customer can prove that there are reproducible deviations from the specification. There is no material defect if it does not occur in the version of the software provided to the Customer and the use of this software is reasonable for the Customer. Notification of defects by the Customer must

occur in writing within one week of handover. The defect and the corresponding data processing environment should be described as precisely as possible.

(7) There will be no claims for defects on software

- in case of only minor deviation from the agreed quality,
- in case of only minor impairment of usability,
- in case of damages that occur as a result of incorrect or negligent handling,
- in case of damages that occur due to special external influences that are not established in the contract,
- for changes or extensions made by the Customer or by third parties and the associated consequences,
- for cases where the software provided does not work with the data processing environment used by the Customer.

(8) If the software shows a material defect, we are entitled to remedy this situation or to effect a replacement delivery at our sole discretion.

(9) As a replacement, we will provide a new edition (update) or a new version (upgrade) of the software, insofar as this is available to us or can be procured at a reasonable cost. Until an update or upgrade has been handed over, we will provide the Customer with an interim solution to work around the material defect, as long as this is possible at a reasonable cost and the Customer can no longer process urgent tasks due to the material defect. If a data carrier or documentation that has been supplied is defective, the Customer can only demand that we provide fully functioning replacements.

(10) The rectification of the material defect can occur at the address of the Customer or at our address, at our choice. If we choose to carry out the rectification at the address of the Customer, the Customer must provide hardware and software as well as other operating conditions (including the necessary computing time) with suitable operating personnel. The Customer must provide us with the documents and information required to rectify the material defect that the Customer has available. At our request, the Customer will enable remote maintenance access.

(11) Our obligations as stated in this Section for software defects are final. All other defect rights, demands and rights of the Customer for defect rectification, reduction in purchase price, cancellation of the contract, all liability and claims for damages as well as all other contractual and non-contractual claims of the Customer to us are excluded within the framework of what is legally permissible.

XIII. Export, data protection

(1) Should the delivery include an export by us that is subject to approval, the contract is not considered to be concluded until the appropriate approval has been received. The Customer is obliged to provide all the documents required for the approval. If we declare to the Customer in writing that we are prepared to obtain the necessary export approvals, we will make every reasonable effort to do so, whereby unless agreed otherwise in writing, the Customer must reimburse all our costs. We offer no guarantee that the export license will be granted. The Customer is responsible for acquiring an import license where required.

(2) If the delivery object is exported by the Customer, the Customer must meet the export control regulations applicable for the delivery object. If the Customer infringes the export control regulations, we are entitled to refuse contract fulfillment or to withdraw from the contract, whereby the Customer must reimburse us in every case with at least the positive contract interest. The Customer is obliged to provide proof of use and/or end-user certificates, even if they are not required officially.

(3) Personal data will be saved and processed in compliance with the statutory provisions.

XIV. Disposal of old electrical equipment

(1) The Customer takes on the obligation to dispose of the delivery object after termination of use at the Customer's own cost according to the applicable valid legal regulations. The Customer releases us from any existing take-back and/or disposal obligations for our part and the associated claims from third parties.

In the application area of the German Electrical and Electronic Equipment Act (ElektroG), the Customer releases us from all obligations in line with Section 19 ElektroG (take-back and disposal obligations) and all the associated claims from third parties.

(2) The Customer must contractually oblige commercial third parties to whom the delivery object is passed that the delivery object is disposed of correctly after termination of use at the parties' own cost according to the applicable valid legal regulations and, in the event that the object is passed on further, that this obligation is also passed on. If the Customer fails to contractually oblige the third party to whom the delivery object is passed to take on the disposal

obligation and to pass on the obligation, the Customer must take back the delivery object after termination of use at the Customer's own cost and dispose of it according to the applicable valid legal regulations. We are released from any claims from third parties.

(3) The Customer must not pass the delivery object or parts thereof to private third parties in any case, due to its classification as exclusively commercially used.

(4) Our claim for acceptance/release by the Customer does not expire before two years after the final termination of use of the delivery object. The two-year period of expiry suspension starts at the earliest with the receipt of a written notification from the Customer by us about the termination of use. We are entitled to demand appropriate proof about the disposal from the Customer.

XV. Place of contract fulfillment, confidentiality, applicable law, court of jurisdiction, severability clause

(1) Unless explicitly agreed otherwise in writing, the place of contract fulfillment is D-77716 Haslach (Federal Republic of Germany).

(2) The Customer is obliged to treat all the industrial, trade and business secrets from us, which the Customer has received or will receive in connection with the contract negotiations, the contract or gains knowledge of in another way, with the utmost confidentiality and only to use them for the purposes of this contract. Any other exploitation or notification to third parties is forbidden. The confidentiality obligation and ban on exploitation also applies after termination of the contract. The Customer is in particular obliged to enforce the same obligations on the Customer's employees and auxiliaries and is liable to us for ensuring that these obligations are met.

(3) The contract is exclusively subject to the laws of the Federal Republic of Germany. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

(4) The sole court of jurisdiction for all disputes arising from or in connection with the supply contract, including all questions relating to the existence, the validity or the termination of the supply contract, is Haslach, Federal Republic of Germany. However, we are also entitled to make use of a court at the Customer's location.

(5) If the parties plan to use the written form in these conditions or in the contract and nothing else has been regulated, the electronic transmission is equal to written form enabling a permanent record of the content of the declaration. The restriction applies that for the effective agreement under Section II. (2), a signature is required.

(6) If a condition of the contract or of these Sales and Delivery Conditions for any reason becomes invalid in whole or in part, the validity of the remaining provisions is unaffected. An invalid condition must be replaced in writing by mutual agreement. If a mutually agreed replacement is not possible, an invalid condition must be replaced by a condition which best conforms to the meaning of the contract wanted by the parties in a manner permitted by law.

Companies' Register: District Court Freiburg/Breisgau HRB 700693

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