

# General Terms and Conditions of Sale and Service

of Gigahertz Optik GmbH

**Status: August 2024**

*Important: The English version of the terms and conditions is a translation from the German version. Only the version in German language is legally binding.*

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The following General Terms and Conditions of Sale and Service are an integral part of all our offers and order confirmations.

## **A. General conditions**

### **§ 1 General information**

1. These General Terms and Conditions of Delivery and Service apply to all our fields of activity. These General Terms and Conditions of Delivery and Service therefore apply to the delivery of goods, for training courses, for work services, in particular installation, repair and maintenance services as well as for services, in particular calibrations and re-calibrations, Application.
2. These General Terms and Conditions of Sale and Service apply exclusively in our relationship with the customer. They shall also apply to all future transactions as well as to all business contacts with the customer, such as the commencement of contract negotiations or the initiation of a contract, even if they are not expressly agreed again or if they are not expressly referred to again. The validity of the customer's general terms and conditions of order or purchase is expressly rejected.
3. Previous agreements and earlier versions of our Terms and Conditions of Sale and Service are superseded by these General Terms and Conditions of Sale and Service.
4. If, in individual cases, contractual obligations are also established with persons or companies who are not themselves to be parties to the contract, the limitations of liability in these General Terms and Conditions of Sale and Performance shall also apply to them, insofar as these General Terms and Conditions of Sale and Performance were included vis-à-vis the third parties when the contractual obligation was established. This is particularly the case if the third parties were aware of these General Terms and Conditions of Sale and Performance when the contractual obligation was established or were already aware of them.
5. Acceptance of our services and deliveries by the customer shall be deemed acceptance of the validity of these General Terms and Conditions of Sale and Delivery.
6. The services are provided to the best of our ability and with due care, but no specific success is owed or guaranteed.

### **§ 2 Conclusion of contract**

1. Unless otherwise agreed, our offers are non-binding.
2. We shall only be bound by an order if it has been confirmed by us in writing by means of an order confirmation or if we commence execution of the order. Should the customer wish to change the order after our order confirmation, this shall require our express written consent.
3. Special agreements on offers require written confirmation from us.
4. Unless otherwise agreed, cost estimates are non-binding. Orders based on a cost estimate always require our written confirmation.

**§ 3 Delivery, scope of delivery and service, performance deadlines , updating, reservation of self-supply**

1. Delivery times are given to the best of our judgment, but are generally non-binding. The commencement of the delivery period and compliance with delivery dates shall be subject to the customer's timely and proper performance of the acts of cooperation incumbent upon him, his provision of all documents to be provided and any agreed advance payments. Delivery dates confirmed by us always refer to the day of dispatch of the goods from the respective registered office of our company or other place of delivery.
2. The scope of our delivery or service shall be determined by our written offer or our order confirmation. Additional agreements and amendments require our written confirmation. If our offer or our order confirmation is based on information provided by the customer (data, figures, illustrations, drawings, weights and dimensions, etc.), our order confirmation shall only be binding if this information was correct. If it turns out after conclusion of the contract that the order cannot be carried out in accordance with the customer's specifications, we shall be entitled to withdraw from the contract if and to the extent that the customer is not prepared to accept the alternative solution proposed by us and to bear any additional costs actually incurred.
3. We are entitled to provide partial performance for all deliveries and services to a reasonable extent. We are also entitled to use subcontractors to fulfill our contractual obligations.
4. Contracts concluded with the customer do not serve to provide or transfer items to consumers. In relation to our customer, we are not obliged to provide updates within the meaning of Section 327f BGB or to inform the customer of such updates.
5. As soon as we become aware of the risk of the customer's inability to pay, we shall be entitled to provide deliveries of goods and services only against advance payment or the provision of security. This shall not affect our right to withdraw from individual contracts already concluded if and to the extent that the customer fails to make an advance payment or provide security within a reasonable grace period.
6. If it has been agreed that the customer shall pay in advance, the execution of our execution of our service shall only take place after we have received the purchase price in full.
7. The information enclosed with our offers and order confirmations, such as drawings, weight, dimension and capacity specifications, are only approximate unless expressly marked as binding. We reserve all rights to drawings, drafts or similar preliminary work.
8. Insofar as we have concluded a congruent hedging transaction for the provision of our services, agreed delivery and service deadlines are subject to our correct and timely self-delivery by our suppliers/subcontractors with the deliveries and services that we require for execution. If, for reasons for which we are not responsible, such correct and timely self-delivery/service provision does not take place, we shall not be in default. In this case, we shall be entitled to withdraw from the contract. We shall inform the customer immediately of such impediments to performance and reimburse any services already rendered by the customer without delay.
9. In the event of force majeure (e.g. war, acts of terrorism, riots, strikes, lockouts, pandemics, labor disputes, operational disruptions through no fault of our own, unrest, official measures or other unavoidable events) or other exceptional circumstances through no fault of our own (e.g. consequences of virus and other attacks by third parties on our IT system or the IT system of our suppliers, insofar as these occur despite the observance of reasonable care in protective measures, we shall not be in default. In this case, we shall also be entitled to

withdraw from the contract if we are already in default. In particular, we shall not be in default in the event of delays in delivery if these are caused by incorrect or late delivery by our suppliers for which we are not responsible. In the event of hindrances of a temporary nature, the delivery or performance periods shall be extended or the delivery or performance dates shall be postponed by the period of the hindrance plus a reasonable start-up period.

10. If we are contractually obliged to perform in advance, we may refuse to perform if it becomes apparent after conclusion of the contract that our claim to consideration is jeopardized by the customer's inability to pay. This is particularly the case if the consideration to which we are entitled is jeopardized due to poor financial circumstances of the customer or other obstacles to performance are imminent, e.g. , in the event of force majeure or other extraordinary circumstances for which we are not responsible, in particular war, acts of terrorism, riots, strikes, lockouts, epidemics or pandemics, industrial disputes, operational disruptions for which we are not responsible, unrest, official measures or other unavoidable events, export or import bans, war events, insolvency of suppliers or sickness-related absences of necessary employees.

#### **§ 4 Prices and packaging**

1. Our prices are net prices and apply " free carrier" ( FCA Türkenfeld, Incoterms 2020) from the respective registered office of our company, unless otherwise agreed. In the case of services, the prices refer to the fulfillment of the service at the agreed place of performance. When invoicing, VAT will be added at the respective statutory rate .
2. Shipping costs and packaging costs will be charged to the customer.
3. If a performance period of more than four months is agreed between the time of confirmation of the order and the performance of the service, we shall be entitled to pass on to the customer any increases in costs incurred by us in the meantime as a result of price increases to a corresponding extent. The same shall apply if a performance period of less than four months was agreed, but the service can only be provided by us later than four months after the confirmation of the order for reasons for which the customer is responsible.
4. If we conclude a contract with the customer in a foreign currency and if there are currency fluctuations of more than 2% to our disadvantage in relation to the euro between the time of conclusion of the contract and the due date of payment, a corresponding increase in the price shall be deemed to have been agreed.
5. In the case of work or services to be provided by us, remuneration - even in the case of a previously submitted cost estimate - shall generally be based on a time-based fee according to the time actually spent, unless a flat-rate remuneration has been agreed. The units of time recording and the current hourly rates can be found in our offer or our order confirmation.
6. Expenses and travel costs shall be invoiced separately, unless otherwise agreed. Travel and accommodation costs shall be reimbursed by the customer upon presentation of a copy of the receipts and deduction of the input tax amounts contained therein, unless otherwise agreed in writing between the parties prior to the execution of the trip. Please refer to our offer or our order confirmation for the current travel and expense rates.

#### **§ 5 Terms of payment**

1. Deliveries are due for payment within 30 days net after receipt of the delivery and invoice.

2. For deliveries to customers based outside Germany, the customer is obliged to pay in advance, unless otherwise agreed. The amount to be paid is due 10 days after notification of readiness for shipment.
3. Payments for our services, in particular for services or work, are due for payment immediately upon receipt of the invoice.
4. We reserve the right to require advance payment for new customers.
5. If we provide our deliveries or services in definable partial sections, we shall be entitled to demand payment of a corresponding part of the remuneration for each partial section.
6. If the customer is domiciled outside Germany and the contractual agreement with the customer does not provide for delivery against advance payment, we shall be entitled, even without special agreement, to make our performance dependent on the provision of a documentary letter of credit by a bank or savings bank authorized in the European Union in accordance with the currently applicable Uniform Customs and Practice for Documentary Credits (UCP 500) of the International Chamber of Commerce (ICC) in the amount of the gross service price. If we do not require the provision of such a documentary letter of credit and unless otherwise contractually agreed, our claim shall become due upon receipt of the delivery or upon complete performance of our service. If we provide our deliveries or services in definable partial sections, we shall in any case be entitled to make a corresponding part of the remuneration due for each partial section and, if necessary, to demand the provision of a documentary letter of credit for each partial section.
7. The customer is not entitled to make deductions without express agreement.
8. If the customer is in default of payment, he shall compensate us for any damage caused by default, in particular interest at a rate of 9 percentage points above the prime rate. If the customer is more than 14 days in arrears with the payment of a due amount or partial amount, if the customer breaches the obligations arising from a reservation of title or if the consideration to which we are entitled is jeopardized due to the customer's poor financial circumstances, the entire remainder of all outstanding claims shall become due for payment immediately.
9. Payment by bill of exchange or acceptance is only permitted if expressly agreed and even then only on account of payment.
10. Only undisputed or legally established claims may be offset against our remuneration claims. The same applies to the exercise of a right of retention. The customer is otherwise only authorized to exercise a right of retention if it is based on the same contractual relationship.
11. The assignment of claims against us by the customer requires our prior approval, which we will only refuse for good cause.
12. Cost estimates submitted by us are, unless otherwise agreed, subject to change.

## **§ 6 Retention of title**

1. The customer is free to process and/or sell the goods delivered by us subject to retention of title in the ordinary course of business. In this case, the following provisions shall apply in addition:

2. All goods delivered shall remain our property until the purchase price has been paid in full and until all claims arising from deliveries of goods within existing business relationships that have already arisen or will arise in the future have been paid.
3. The retention of title shall extend to the full value of the products resulting from the processing, mixing or combining of our goods, whereby we shall be deemed to be the manufacturer. If, in the event of processing, mixing or combining with goods of third parties, their right of ownership remains, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. In all other respects, the same shall apply to the resulting product as to the goods delivered under retention of title.
4. The customer hereby assigns to us as security any claims against third parties arising from the resale of the goods or the product in total or in the amount of our possible co-ownership share in accordance with the above paragraph. We accept the assignment. The aforementioned obligations of the customer shall also apply with regard to the assigned claims.
5. The customer shall remain authorized to collect the claim in addition to us. We undertake not to collect the claim as long as the customer meets his payment obligations to us, is not in default of payment, no application for the opening of insolvency proceedings has been filed and there is no other deficiency in his ability to pay. If this is the case, however, we can demand that the customer informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment.
6. If the realizable value of the securities exceeds our claims by more than 10%, we shall release securities of our choice at the customer's request.
7. The goods subject to retention of title may neither be pledged to third parties nor assigned as security before full payment of the secured claims. The customer must inform us immediately in writing if and insofar as third parties have access to the goods belonging to us.
8. If the customer acts in breach of contract, in particular in the event of non-payment of the purchase price due, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand the return of the goods on the basis of the retention of title. The demand for return does not at the same time include a declaration of withdrawal; rather, we are entitled to demand only the return of the goods and reserve the right to withdraw from the contract. If the customer does not pay the purchase price due, we may only assert these rights if we have previously set the customer a reasonable deadline for payment without success or if setting such a deadline is dispensable according to the statutory provisions.
9. The customer must treat the reserved goods with care. At our request, the customer must insure the goods subject to retention of title at his own expense against fire, water damage and theft at replacement value. If maintenance and inspection work becomes necessary, the customer must carry it out in good time at his own expense.
10. If the effectiveness of this retention of title is dependent on its registration, e.g. in public registers in the customer's country, we are entitled and authorized by the customer to effect this registration at the customer's expense. The customer is obliged to provide all cooperation required for this registration free of charge.

## **§ 7 Obligations of the customer to cooperate**

1. The customer shall support us and our employees to a reasonable and customary extent. If we have to provide project-related work or services by our employees in the customer's company, support may also include the provision of workrooms and workstations with PCs and telephones at our request, the costs of which shall be borne by the customer.
2. Materials, information and data that we require to provide our services must be made available to us by the customer. Data and data carriers must be technically flawless. If special statutory or operational safety regulations apply in the customer's company, the customer must inform us of this before we provide our services.
3. Instructions from the customer to our employees regarding the specific form of service provision are excluded, unless instructions are necessary in connection with safety requirements and operating regulations in the customer's company. Instructions on individual questions regarding work or services to be provided by us shall not be given to the employees entrusted with the task by us, but to the contact persons designated by us for the project. We always decide on our own responsibility on the necessary measures within the scope of our performance obligations.
4. The customer must provide us with the valid VAT identification number issued to him by a member state of the European Union immediately upon conclusion of the contract. The customer must also inform us of any changes to the VAT identification number at any time. Should we suffer any damage due to a missing, incorrect or incomplete notification of the VAT identification number by the customer, in particular due to a resulting loss of the tax exemption for intra-Community deliveries in accordance with §§ 4 No. 1 lit b), 6a UstG, the customer shall be obliged to compensate us. This shall not apply if the customer is not responsible for the breach of duty.
5. If, in individual cases, we are obliged to inspect and carry out export activities, the following shall apply:  
The customer undertakes in particular to inform us immediately of any obstacles or problems that may arise when placing the delivery on the market in the third country.  
The customer is obliged to ensure that all necessary information and documents required for the export and marketing of the delivery in the third country are provided in full and in good time.

## **§ 8 Property rights**

If we manufacture according to the customer's drawings, models or samples, the customer guarantees that this does not infringe third-party property rights. Before placing an order with us, the customer is obliged to ascertain whether the products ordered by him infringe the industrial property rights of third parties. In this respect, the customer shall indemnify us against any third-party claims. If the customer is prohibited from manufacturing or delivering by a third party with reference to an industrial property right belonging to him, we shall be entitled to stop the work without examining the legal situation and to demand reimbursement of the costs incurred.

## **§ 9 Secrecy**

1. The customer undertakes to keep secret all information that becomes accessible to him that is designated as confidential or is recognizable as business or trade secrets due to other circumstances, in particular technical and commercial information, and - unless expressly approved in writing in advance or required to achieve the purpose



of the contract - not to record it, forward it to third parties or exploit it in any way. This confidentiality obligation shall remain in force for a further five years after complete fulfillment or termination of the contract.

2. The obligations set out in Clause 1 also apply to business secrets within the meaning of Section 2 Clause 1 GeschGehG.
3. The customer undertakes to protect business secrets within the meaning of § 2 No. 1 GeschGehG as well as other confidential information from being obtained by third parties by means of confidentiality measures appropriate to the circumstances. The confidentiality measures must at least correspond to the customary level of care and the level of protection that the customer applies to its own business secrets of the same category.
4. This does not apply to confidential information,
  - which were already known to the customer prior to the commencement of the contract negotiations or which are disclosed by third parties as non-confidential, provided that these third parties are not in breach of confidentiality obligations;
  - which the customer has developed independently,
  - which are or become public knowledge through no fault or action of the customer or;
  - which must be disclosed due to legal obligations or official or court orders.
  - If the customer invokes one of the aforementioned exceptions, it is up to the customer to prove that the requirements have been met.

In the latter case, the customer must inform us immediately before disclosure. If the customer invokes one of the above exceptions, he shall bear the burden of proof in this respect. Further statutory confidentiality obligations shall remain unaffected.

5. The customer is not entitled to obtain trade secrets or other confidential information by observing, examining, disassembling or testing a product or object within the meaning of Section 3 (1) GeschGehG ("reverse engineering"), unless the product or object has been made publicly available.
6. For each case of culpable breach of this confidentiality obligation by the customer, we shall be entitled to claim liquidated damages in the amount of EUR 10,000.00 (in words: ten thousand euros); the customer shall be free to prove that we have suffered no or less damage. If the proof is successful, the customer shall only be entitled to compensation for the damage actually incurred.
7. We reserve the right to claim demonstrably higher damages instead of or in addition to the lump-sum compensation.

#### **§ 10 Miscellaneous: Place of performance, place of jurisdiction, applicable law, data processing, contract language, severability clause**

1. The place of performance shall be the respective registered office of the contracting company of our group of companies.
2. The exclusive place of jurisdiction for all disputes arising between the parties from the contractual relationship, insofar as the customer is a merchant, a legal entity under public law or a special fund under public law or the customer has no general place of jurisdiction in the Federal Republic of Germany or has relocated his place of

jurisdiction abroad, is Tübingen. As an exception to this, we are also entitled to take legal action against the customer at his general place of jurisdiction.

A merchant is any entrepreneur who is entered in the commercial register or who operates a commercial business and requires a commercially organized business operation. The customer has his general place of jurisdiction abroad if he has his place of business abroad.

3. The customer is aware that data from business transactions, including personal data, must be stored and processed within the scope of business necessity and transmitted to third parties. The customer agrees to this data collection and processing.
4. The contractual language is German. If the parties also use another language, the German wording shall take precedence in accordance with the agreement.
5. Should a provision in these General Terms and Conditions of Sale and Service or a provision within the framework of other agreements be or become invalid, this shall not affect the validity of all other provisions or agreements.
6. The contractual and other legal relationships with our customers shall be governed by German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

## **B. Special conditions for the delivery of goods and for the manufacture and delivery of goods according to Individual production**

### **§ 1 Scope of application**

The following special terms and conditions apply in addition to the General Terms and Conditions under Section A. for all contracts with the customer for the delivery of goods as well as for the manufacture and delivery of goods according to the customer's individual specifications (custom-made products).

### **§ 2 Scope of services**

1. Transport insurance for goods to be shipped will only be taken out at the express request of the customer. The transport insurance is then taken out in the name and for the account of the customer.
2. The transfer of ownership and transfer of the object of purchase is owed. The installation or configuration of the object of purchase is not owed, unless this has been expressly agreed.

### **§ 3 Transfer of risk**

1. The risk of loss or deterioration of the goods shall pass to the customer when the goods are handed over for shipment, even if partial deliveries are made. If dispatch is delayed for reasons attributable to the customer, the risk shall pass to the customer upon notification of readiness for dispatch.
2. If acceptance has been agreed with the customer, the risk shall pass to the customer at the time of the declaration of acceptance. The customer shall accept the goods or the completed service within the agreed period, otherwise within a reasonable period, but at the latest within a period of two weeks after handover or - if handover is excluded due to the nature of the service - after completion. In the case of a service to be accepted, the period

begins with our notification to the customer that the service has been completed. The service provided by us shall be deemed to have been accepted upon expiry of the agreed period for acceptance if the customer neither declares acceptance in text or written form nor informs us in text or written form which defects still need to be remedied. We shall draw the customer's attention to this legal consequence in the notification of completion of the work.

#### **§ 4 Early termination of contracts for work and materials**

The following applies to contracts for work and materials in accordance with § 650 BGB:

1. If the customer terminates the contract before completion of our work delivery service, the customer shall be obliged to pay the full agreed remuneration, less our expenses saved as a result of the termination of the contract. We shall also be obliged to offset what we achieve or maliciously fail to achieve by using our labor elsewhere.
2. The parties agree that, in deviation from Section 648 sentence 3 BGB, it is assumed that we are entitled to 10 % of the agreed of the agreed remuneration attributable to the part of the work not yet performed. The parties shall have the option of proving higher or lower saved expenses or other or maliciously omitted other acquisition.

#### **§ 5 Placing on the market in third countries**

1. The customer is deemed to be the distributor of the delivery if it is exported to a third country.
2. The customer is solely responsible for the compliance with the legal provisions and regulations of deliveries exported to a third country.
3. The customer undertakes to obtain and comply with all necessary permits, approvals and registrations required for placing the deliveries on the market in the third country at its own expense.
4. The customer shall indemnify us against all claims, damages and costs that could result from non-compliance with the statutory provisions in the third country.
5. The customer is obliged to inform us immediately of all relevant legal changes in the third country that could affect the marketing of the goods.

#### **§ 6 Exemption from liability for non-fungible items**

If we manufacture non-fungible items on behalf of the customer, in particular custom-made products, functional samples or prototypes, these items may only be used for internal research purposes, but not for commercial purposes, without our express consent. Functional samples are products that are used for internal testing of individual functions. Prototypes are products that represent a fully functional test, preliminary or initial sample for the respective contractual purpose, whereby the properties of the prototype are not guaranteed for subsequent product deliveries and may in particular deviate from the properties of a later series product.

If the customer makes commercial use of the goods without our express consent and this results in a breach of domestic or foreign or official safety regulations or product liability regulations, the customer shall indemnify us against any corresponding third-party claims. In cases of fault-based liability, however, this shall only apply if the customer is at fault. If the cause of the damage lies within the customer's area of responsibility, he shall bear the burden of proof in this respect.

## **§ 7 Warranty and general liability**

1. The limitation period for claims due to defects in our deliveries and services is one year from the start of the statutory limitation period. After expiry of this year, we may in particular also refuse subsequent performance without the customer being entitled to claims against us for reduction, withdrawal or compensation. This shortening of the limitation period does not apply to claims for damages other than those for refused subsequent performance and it does not generally apply to claims for fraudulent concealment of the defect.
2. To determine whether the item is free of defects at the time of the transfer of risk, a quality agreement between the parties shall take precedence over the objective requirements of the item within the meaning of Section 434 (3) BGB.
3. A presumed use of the item within the meaning of § 434 para. 2 no. 2 BGB requires comprehensive information from the customer about the intended use prior to conclusion of the contract as well as our consent declared in writing in this knowledge.
4. The item delivered by us satisfies the objective requirements for the usual quality with regard to the durability of the item in accordance with § 434 para. 3 sentence 1 no. 2, sentence 2 BGB, if the item has the ability to retain its required functions and performance under normal use at the time of the transfer of risk.
5. Claims of the customer for subsequent performance due to defects in the service or delivery to be provided by us shall exist in accordance with the following provisions:
  - 5.1. The customer must give us the time and opportunity required for the subsequent performance owed, in particular to hand over the item complained about for inspection purposes. If the item has been installed in an immovable item as intended, the customer is obliged to give us the opportunity to inspect the defective item on site.
  - 5.2. If the delivered item is defective, we may initially choose whether to provide subsequent performance by remedying the defect (rectification) or by delivering a defect-free item (replacement delivery). The right to refuse the chosen type of subsequent performance under the statutory conditions remains unaffected.
  - 5.3. We are entitled to make the subsequent performance owed dependent on the customer paying the purchase price due. However, the customer is entitled to retain a reasonable part of the purchase price in proportion to the defect.
  - 5.4. In the event of a defect, we are entitled to make a subsequent delivery dependent on the customer returning the defective item and any use made of it to us step by step in accordance with §§ 346 to 348 BGB. There is no obligation to take back the replaced item.

- 5.5. We shall bear the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labor and material costs, if a defect actually exists.
- 5.5.1. If the customer has installed the defective item in another item or attached it to another item in accordance with its type and intended use after the defect has become apparent, we are not obliged to reimburse the customer for the necessary expenses for removing the defective item and installing or attaching the repaired or delivered defect-free item.
- 5.5.2. If the customer has installed the defective item in another item or attached it to another item in accordance with its type and intended use before the defect became apparent, we shall only be obliged to reimburse the customer for the necessary expenses for the removal of the defective item and the installation or attachment of the repaired or delivered defect-free item within the scope of subsequent performance if the customer has previously given us the opportunity to carry out these actions ourselves within a reasonable period of time.
- 5.5.3. The customer shall bear the costs of subsequent performance incurred as a result of the purchased item having been taken to a place other than the customer's commercial establishment after delivery.
- 5.5.4. If a customer's request to remedy a defect proves to be unjustified, we may demand reimbursement of the resulting costs from the customer.
6. The customer can only demand compensation:
  - 6.1. For damage caused by
    - an intentional or grossly negligent breach of duty on our part or
    - are based on an intentional or grossly negligent breach of duty by one of our legal representatives, executives or vicarious agents, which are not essential contractual obligations (cardinal obligations) and are not primary or secondary obligations in connection with defects in our deliveries or services.
  - 6.2. For damages resulting from the intentional or negligent breach of material contractual obligations (cardinal obligations) on our part, on the part of one of our legal representatives, executives or vicarious agents. Essential contractual obligations (cardinal obligations) within the meaning of the above subsections 3.1 and 3.2 are obligations whose fulfillment is essential for the proper execution of the contract and on whose compliance the customer regularly relies.
  - 6.3. Furthermore, we shall be liable for damages due to the negligent or intentional breach of obligations in connection with defects in our delivery or service (subsequent performance or ancillary obligations) and
  - 6.4. for damages that fall within the scope of protection of a guarantee (assurance) expressly given by us or a guarantee of quality or durability.
7. In the event of a breach of a material contractual obligation due to simple negligence, liability shall be limited to the amount of damage typically to be expected and foreseeable by us at the time of conclusion of the contract when exercising due care.

8. Claims for damages by the customer in the event of a simple negligent breach of a material contractual obligation shall become time-barred one year after the statutory limitation period begins. This does not apply to damages resulting from injury to life, limb or health.
9. The customer's rights pursuant to Sections 445a, 445b and 478 BGB in the event that claims are asserted against the customer or its other customers in a supply chain shall remain unaffected in accordance with the following provisions:
  - 9.1. The customer bears the burden of proof that the expenses for subsequent performance were necessary and that he could not have refused subsequent performance to his buyer in accordance with Section 439 (4) BGB or could have provided subsequent performance in a cheaper way.
  - 9.2. The claim arising from § 445a para. 1 BGB shall become time-barred in accordance with § 445b para. 1 BGB two years after delivery by us to the customer. This period shall also apply if a longer period would apply according to § 438 BGB.
  - 9.3. The limitation period for the customer's claims against us due to the defect of a sold newly manufactured item as defined in §§ 437 and 445a para. 1 BGB shall expire at the earliest two months after the time at which the customer has fulfilled the claims of his buyer, provided that the claims had not yet expired in the relationship between the customer and his buyer. This suspension of expiry shall end no later than five years after the time at which we delivered the item to the customer.
  - 9.4. The above provisions under Clauses 9.1 to 9.3 shall not apply if the last contract in the supply chain was a purchase of consumer goods.
10. Claims in accordance with § 327u BGB remain unaffected by the above provisions and exist to the statutory extent within the statutory periods.
11. Claims for damages against us arising from mandatory statutory liability, for example under the Product Liability Act, as well as from injury to life, limb or health shall remain unaffected by the above provisions and shall exist to the extent permitted by law within the statutory time limits.
12. Our liability for damages resulting from placing the delivery on the market in a third country is excluded and is transferred to the customer.
13. The customer shall indemnify us against all third-party claims asserted in connection with the marketing of the goods in a third country.

## C. Special conditions for the delivery of software

### §1 Scope of application

The following special terms and conditions apply in addition to the General Terms and Conditions under Section A. insofar as software is provided within the scope of services under Sections B. or D.

### §2 Scope of delivery and rights of use

#### 1. Delivery and scope of delivery

The delivery of software, including program corrections, takes place in each case on a standard market data carrier or online or as a download from a homepage. The scope of delivery also includes application documentation. Unless otherwise agreed with the customer, the application documentation can be provided at our discretion either as an operating manual or on a data carrier. We are not obliged to provide the source code of the software.

#### 2. Rights of use to the software

2.1. The respective license conditions of the software apply to the granting of rights of use to the software.

2.2. Unless otherwise agreed, the customer shall receive a simple right to use the delivered software for an unlimited period of time. Unless otherwise agreed, the right of use entitles the customer to use the software on a single PC or a single device (single user license).

2.3. No further rights are granted, in particular for reproduction beyond the extent required for contractual use. With the exception of the right to correct errors, the customer is not entitled to make changes to the software without our express consent. The customer's right to rectify errors shall only apply if we have previously refused to rectify the error or have failed to do so. The creation of a backup copy of the software by the customer as well as the duplication within the scope of the usual data backup to ensure the intended operation of the software is permitted. The decompilation of the software in accordance with the provisions of § 69e UrhG is permitted.

2.4. The customer shall be granted the rights of use to the delivered program corrections to which he is entitled to the original program version.

### §3 Warranty and general liability

The conditions of warranty and general liability according to Part B § 5 shall apply. The following shall also apply to a claim for subsequent performance:

1. We are entitled to carry out the rectification on the customer's premises or by remote maintenance. We shall also fulfill our obligation to rectify defects by providing updates with an automatic installation routine for download and by offering the customer telephone support to solve any installation problems that may arise.

2. If we are not in a position to rectify the defect or provide an error-free subsequent delivery, we shall show the customer ways of avoiding the error. The workarounds shall be deemed to be subsequent performance, provided

that they do not lead to a significant impairment of the functionality or processes of the software. Workarounds are temporary workarounds for an error or malfunction without interfering with the source code.

If necessary, the user documentation will also be adapted in the event of a rectification.

## **D. Special conditions for work services**

### **§ 1 Scope of application**

The following special terms and conditions for work services apply in addition to the General Terms and Conditions under Section A. for all contracts with the customer for the provision of work services.

### **§ 2 Subject matter of the contract**

The object of the contract is the provision of work services.

### **§ 3 Changes during the execution of the work / change request management**

1. We can - at the customer's request or at our own request - agree changes to the work with the customer. The agreements shall be recorded and signed. Insofar as no agreements are made regarding remuneration or other contractual provisions, in particular time schedules with regard to the agreed changes, the changes must be carried out within the framework of the contractual provisions agreed up to that point.

2. If we do not reach agreement with the customer on the changes requested by us or the customer, the following shall apply:

The customer is entitled to request changes from us until acceptance. The change requests must be submitted to us in writing. We shall examine the change request. We shall accept changes requested by the customer unless they are unreasonable for us within the scope of our operational capacity. We shall inform the customer in writing within 14 days of receipt of the change request whether

- the change request is accepted and implemented in accordance with the previous provisions of the contract.
- the change request affects contractual provisions, e.g. price, execution deadlines, etc.: In this case, we shall inform the customer of the conditions under which the change can be implemented. The change shall only be implemented if the customer accepts the change on the terms and conditions notified by us within 14 days of receipt of the notification.
- the examination of the feasibility of the change request is extensive: In this case, we can make the examination of the change dependent on the customer paying for the examination effort. In such a case, we are obliged to inform the customer in writing of the time required and the costs for the review. The inspection order shall only be deemed to have been issued once the customer has commissioned us in writing to carry out the inspection.
- the change request is rejected.



- If we do not respond to the change request within 14 days of receipt, the change request shall be deemed to have been rejected.
  - We observe the generally recognized test methods and the applicable statutory regulations when performing the service.
3. If legal or other regulations change after conclusion of the contract, if new regulations are introduced or if new or amended requirements arise for us, for example from subsequently submitted, amended or new manufacturer documentation, factory standards or risk assessments, which affect the contractual performance, and if the customer has informed us of this in good time, we shall take these requirements into account as far as possible. Remuneration agreed in service contracts or orders for services shall be adjusted at our reasonable discretion (Section 315 BGB). In doing so, we shall take into account in particular the expenses for changed requirements for testing effort, personnel and/or used or new tools.

#### **§ 4 Acceptance**

The work shall be handed over after completion. If handover is excluded due to the nature of the work, notification of completion shall be given. After completion and handover or - if handover is excluded due to the nature of the work - after notification of completion, the work shall be accepted. The customer shall accept the completed work within the agreed period, otherwise within a reasonable period, but at the latest within a period of two weeks after handover or - if handover is excluded due to the nature of the work - after completion. The period begins with our written notification to the customer that the work has been completed. The work shall be deemed to have been accepted upon expiry of the agreed period for acceptance if the customer neither declares acceptance in writing nor informs us in writing which defects still need to be rectified. We shall draw the customer's attention to this legal consequence when notifying him of completion of the work.

#### **§ 5 Warranty and general liability**

1. The limitation period for claims due to defects in our work is one year from the start of the statutory limitation period. After expiry of this year, we may in particular also refuse subsequent performance without this giving rise to claims against us by the customer for reduction, withdrawal or compensation. This shortening of the limitation period shall not apply to claims for damages other than those due to refused subsequent performance and it shall generally not apply to claims in the event of fraudulent concealment of the defect.
2. Claims of the customer for subsequent performance due to defects in our work shall otherwise exist to the extent permitted by law, subject to the following proviso:
  - 2.1. The customer must give us the time and opportunity required for the subsequent performance owed, in particular to hand over the rejected work for inspection purposes.
  - 2.2. If the work delivered is defective, we may initially choose whether to provide subsequent performance by remedying the defect (subsequent improvement) or by delivering a defect-free item (replacement delivery). The right to refuse the chosen type of subsequent performance under the statutory conditions remains unaffected.

- 2.3. We are entitled to make the subsequent performance owed dependent on the customer paying the remuneration due. However, the customer is entitled to retain a reasonable portion in relation to the defect.
- 2.4. We shall bear the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labor and material costs, if a defect actually exists.
  - 2.4.1 The customer shall bear the costs of subsequent performance incurred due to the fact that the work has been taken to a location other than the customer's commercial establishment after being handed over.
  - 2.4.2 If a customer's request to remedy a defect proves to be unjustified, we may demand reimbursement of the resulting costs from the customer.
3. The customer can only demand compensation:
  - 3.1 For damage caused by  
  
an intentional or grossly negligent breach of duty on our part or  
  
are based on an intentional or grossly negligent breach of duty by one of our legal representatives, executives or vicarious agents, which are not material contractual obligations (cardinal obligations) and are not primary or secondary obligations in connection with defects in our deliveries or services.
  - 3.2 For damages resulting from the intentional or negligent breach of material contractual obligations (cardinal obligations) by us, one of our legal representatives, executives or vicarious agents. Essential contractual obligations (cardinal obligations) within the meaning of the above subsections 3.1 and 3.2 are obligations whose fulfillment is essential for the proper execution of the contract and on whose compliance the customer regularly relies.
  - 3.3 Furthermore, we shall be liable for damages due to the negligent or intentional breach of obligations in connection with defects in our work (subsequent performance or ancillary obligations) and
  - 3.4. for damages that fall within the scope of protection of a guarantee (assurance) expressly given by us or a guarantee of quality or durability.
4. In the event of a breach of a material contractual obligation due to simple negligence, liability shall be limited to the amount of damage typically to be expected and foreseeable by us at the time of conclusion of the contract when exercising due care.
5. Claims for damages by the customer in the event of a simple negligent breach of a material contractual obligation shall become time-barred one year after the statutory limitation period begins. This does not apply to damages resulting from injury to life, limb or health.
6. Claims for damages against us arising from mandatory statutory liability, for example under the Product Liability Act, as well as from injury to life, limb or health shall remain unaffected by the above provisions and shall exist to the extent permitted by law within the statutory time limits.

## **E. Special conditions for training courses**

### **§ 1 Scope of application**

The following Special Terms and Conditions for Training apply in addition to the General Terms and Conditions under Section A. for all contracts with the customer for the provision of training services.

### **§ 2 Place of performance**

1. The training courses are held at the location specified in the training offer.
2. If, in individual cases, training courses are to be held at the customer's premises in accordance with the contractual agreement, the customer shall be obliged to provide suitable rooms and presentation equipment for the training course.

### **§ 3 Participants in a training course**

1. The maximum number of people who can take part in a training course is determined by individual agreement, not including the training staff.
2. Training is only provided to the customer and employees of the customer's company. If other persons take part in the training, individual agreements between us and the customer are required.

### **§ 4 Termination, relocation of a training course**

1. A contract for the provision of training can only be terminated for good cause. Notice of termination must be given in writing.
2. We shall provide the speaker named in the offer or the order confirmation from our company or an external speaker commissioned by us for the training. If a speaker is unable to attend the agreed training date for reasons for which we are not responsible, we are entitled to name a suitable replacement speaker from our company or another suitable external replacement speaker, or to postpone the training date to an alternative date in consultation with the customer.

### **§ 5 Liability**

1. the customer can only demand compensation:
  - 1.1 For damage caused by
    - an intentional or grossly negligent breach of duty on our part or
    - are based on an intentional or grossly negligent breach of duty by one of our legal representatives, executives or vicarious agents, which are not essential contractual obligations (cardinal obligations) and are not primary or secondary obligations in connection with defects in our services.

1.2 For damages resulting from the intentional or negligent breach of material contractual obligations (cardinal obligations) on our part, on the part of one of our legal representatives, executives or vicarious agents.

Material contractual obligations (cardinal obligations) within the meaning of subsections 1.1 and 1.2 above are obligations whose fulfillment is essential for the proper execution of the contract and on whose compliance the customer regularly relies.

2. In the event of a breach of a material contractual obligation due to simple negligence, liability shall be limited to the amount of damage typically to be expected and foreseeable by us at the time of conclusion of the contract when exercising due care.

3. Claims for damages by the customer in the event of a simple negligent breach of a material contractual obligation shall become time-barred one year after the statutory limitation period begins. This does not apply to damages resulting from injury to life, limb or health.

4. Claims for damages against us arising from mandatory statutory liability, for example under the Product Liability Act, as well as from injury to life, limb or health shall remain unaffected by the above provisions and shall exist to the extent permitted by law within the statutory time limits.