

## **General Terms and Conditions of Sale and Supply**

(Status: January 19<sup>th</sup>, 2022)

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### **I. General – Scope of Application**

- (1) Our goods and services are supplied solely in accordance with the following General Terms and Conditions of Sale and Supply. The version on file on our website at the time of the order applies. These General Terms and Conditions also apply to any future business between the parties to the contract without any new reference thereto being required. They also apply to subsequent contracts even if we do not make any express reference to them, including but not limited to the case of goods or services that we supply to the customer without reservation in the knowledge that the general terms and conditions of the customer<sup>1</sup> differ from or conflict with our own General Terms and Conditions of Sale and Supply. We do not acknowledge any terms and conditions of the customer that differ from our own unless we have expressly consented thereto at least in text form.
- (2) Any and all agreements between us and the customer concerning execution of this contract are set out in writing in this contract. Amendments and/or addenda to this contract, including but not limited to this provision, are not valid unless they are set out in text form. This requirement as to form cannot be waived except by a declaration in text form.
- (3) Our conditions of sale are only applicable to entrepreneurs as defined in Sec. 310 (1) of the German Civil Code (Bürgerliches Gesetzbuch, BGB). The customs and habits common in commercial dealings are taken adequately into account.
- (4) We are entitled to assign the claims arising from our business relationships to others.

### **II. Offers, Conclusion of Contract, Scope of Performance**

- (1) All offers that we make to the customer are non-binding and subject to change. The customer's order is binding within the meaning of Sec. 145 BGB. We do, however, reserve the right to object

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<sup>1</sup> Customer: Person or organization that receives products or services that are intended for or requested by this person or organization.

to the order within two (2) weeks after receipt thereof, either in text form or in the form in which the order was placed. This is especially the case if an objection to our terms of sale and supply is included with the customer's order.

A contract is concluded at the latest when the goods or services ordered are provided without reservation at the agreed time of delivery. Any side agreements, amendments, or performance data must be confirmed by us in text form.

- (2) We retain title and copyright to illustrations, drawings, calculations, plans and other documents; this includes but is not limited to documents designated as "confidential." Such documents must not be made accessible to third parties except with our express consent, given in at least text form, and shall be returned to us at no cost to us at our request.

The parties to the contract undertake to treat as business secrets any technical details and details that are not public knowledge to which they become privy through the business relationship.

- (3) The documents, drawings, weight and dimension data, performance and consumption data that form part of our offer and the technical data and descriptions in the respective product information materials are binding. Information from advertising materials and illustrations is non-binding and purely informational in nature. It does not constitute either agreed qualities or guarantees of the specific quality or durability of the goods or services that we are to supply under this contract, hereinafter also referred to as "item(s) supplied."
- (4) We are entitled to change any materials indicated in our offer or agreed upon with our customer relating to our items supplied without the consent of our customer insofar as the change in material does not lead to any change in the properties or functionalities of the items ordered and supplied.
- (5) If an item is sold on the basis of a sample or specimen, we warrant only that the item is in accordance with the specimen and produced in a workmanlike manner, but this does not imply a guarantee within the meaning of Sec. 276 (1) BGB or any guarantee of the specific quality or durability of the items which we are to supply hereunder within the meaning of Sec. 443 BGB.
- (6) If the item supplied is used outside Germany, the scope supplied for occupational safety and health and environmental protection equipment is in accordance with the agreement reached. If no such agreement has been reached or there is any doubt as to which provisions apply, the provisions applicable in the Federal Republic of Germany are the operative factor. The customer is responsible for ensuring compliance with statutory or other requirements at the place of use.

- (7) If the parties agree to standard commercial clauses on the mode of delivery, said clauses shall be interpreted in accordance with the Incoterms (ICC) of the International Chamber of Commerce in Paris, in the version applicable on the date on which the contract is concluded.

### **III. Prices, Terms of Payment, Default on Payment**

- (1) The prices agreed upon when a contract is concluded shall apply. If the parties have not expressly stipulated a price or if the customer has purchased the items to be supplied on the basis of list prices, the applicable prices shall be those which apply on the date of delivery as stated in our price list, which can be sent upon request. Unless otherwise agreed in a specific case, prices shall be ex works (Incoterm EXW), but exclusive of packaging, shipping, transportation, tolls, cargo insurance, copyright fees and other ancillary costs.
- (2) Our prices do not include VAT at the statutory rate; VAT will be stated separately in the invoice at the statutory rate applicable on the invoice date.
- (3) If a volume discount has been agreed and the agreed minimum quantity required for the discount in question (price reduction granted subject to certain terms) is not reached for reasons for which the customer is responsible, the price according to the price list applicable at the time of the contract is deemed to have been agreed unless a different price has been agreed for the lower quantity received by the customer, in which case this different price applies. The price difference shall be billed to the customer.
- (4) Unless otherwise agreed in a specific case, all public levies (taxes, charges, customs duties, etc.) arising out of or in connection with the conclusion or execution of this contract shall be borne by our customer.
- (5) Any prompt payment discount requires a separate agreement in at least text form originating with us.
- (6) The customer shall be deemed to be in default of payment without any warning being required by no later than 30 days after the date of invoicing (invoice date). Irrespective of this provision, the agreed payment deadlines and the payment deadlines stated in the invoice apply. The statutory provisions regarding the consequences of default in payment shall apply.

- (7) We are entitled to offset incoming payments against older claims for payment first, then against costs and interest associated with the principal amount and lastly against the principal amount itself. The customer has no rights of setoff or retention of payment unless its counterclaims have been declared final and absolute by a court of law or we have acknowledged them or not disputed them. Moreover, there shall only be a right of retention if the counterclaim being asserted relates to the same contractual relationship as the claim itself.

#### **IV. Delivery Time**

- (1) Delivery times mentioned by us are non-binding unless they have been agreed in text form and expressly agreed as binding. Where delivery times have been agreed in text form and expressly agreed as binding, the provisions below regarding paragraphs 2 through 9 of Sec. IV of these General Terms and Conditions of Sale and Supply apply.
- (2) The delivery time stated does not commence until all technical details have been finalized or all export details clarified in full, as the case may be. They are always to be understood as exclusive of the duration of transportation. Agreed delivery times are only approximate unless the parties have expressly agreed in text form to delivery by a specific date within the meaning of Sec. 286 (2) No. 4 BGB or Sec. 376 of the German Commercial Code (Handelsgesetzbuch, HGB). In the event of delay or default in delivery in the case of such an agreed delivery by a specific date or if the customer is entitled to assert rights because it has no further interest in continued contractual fulfillment, our liability shall be as provided for by statute.

The delivery time shall be deemed to have been observed if when the delivery time expires the item to be supplied has left our plant or the customer has been informed that it is ready to ship.

- (3) Fulfillment of our supply and performance duties presupposes that the customer has fulfilled its obligations in a timely and proper manner. If the parties have agreed to payment of an initial installment or if we cannot perform until the customer has provided documents, permits or releases, the delivery period shall not begin until all the stipulated requirements have been satisfied. We reserve the right to raise the defense of unperformed contract.
- (4) We shall not be in default until a reasonable cure period set by the customer has expired. Our liability for damages is limited to the foreseeable and typically occurring damage and/or loss provided that the delay or default in delivery is not based on an intentional breach of contract falling within our sphere of responsibility. The same limitation of liability applies if the delay or

default in delivery falling within our sphere of responsibility is based on a culpable breach of a material contractual duty.

- (5) If the customer provides evidence that it has incurred damage or a loss as a result, we shall pay lump-sum damages for delay or default in the amount of 3% of the value of the portion of the order delayed for each full week of delay or default owing to negligence, but no more than 15% thereof.
- (6) We are entitled to supply goods and services in installments within the agreed periods provided that this is not unreasonable for the customer. In the case of delivery contracts, each instance in which goods and services are supplied in installments is deemed to constitute independent performance. Delivery periods are extended by any period by which the customer is itself in default of fulfillment of its contractual obligations.
- (7) If the customer is in default with acceptance or culpably breaches other cooperation duties, we are entitled to demand compensation for any damage and/or loss incurred by us, including reimbursement for any additional expenses (for example costs of placement in storage). We reserve the right to make claims over and above this.
- (8) If the criteria stipulated in paragraph (7) above are satisfied, the risk of accidental loss or accidental deterioration of the purchased item shall pass to the customer at the time when the customer fell into default of acceptance or payment.
- (9) In the event of *force majeure* and other unforeseeable, unusual circumstances that do not fall within our sphere of responsibility, such as disruption to operations owing to fire, water and similar circumstances, failure of production equipment and machinery, delays in delivery or failure to supply on the part of our suppliers, business interruption owing to shortage of raw materials, energy or manpower, strike, lockout, difficulties in obtaining transport, disruptions to communications or traffic or intervention by government authorities, we may postpone the provision of goods or services for the duration of the disruption plus a reasonable amount of lead time provided that we are prevented from fulfilling our performance duties in a timely manner by the said circumstances through no fault of our own. If the provision of goods or services is delayed by more than one month as a result, both we and the customer are entitled to rescind the contract with regard to the portion affected by the supply disruption, without there being any claims whatsoever for damages.

**V. Delivery Quantity, Error in Delivery**

Visible discrepancies in quantity must be reported immediately upon receipt, and hidden discrepancies in quantity must be reported within four working days after receipt, with such report being made in text form to both us and the transportation service provider. Acceptance of the items supplied from the transportation service provider is deemed to constitute acknowledgment and evidence that the items were received in the correct amount and that there were no problems with the packaging and/or loading. Moreover, the customer undertakes to report to us in text form any items inadvertently delivered to it by us without the customer having ordered them within not more than 14 days and to keep these items available for pick-up by a transportation service provider to be commissioned by us.

**VI. Terms and Conditions for Returns of Products and Services**

- (1) Subject to a review to determine whether the items are intact and undamaged and to the sender's obligation to provide documentation (the delivery slip and a copy of the invoice must be enclosed with all returns), pei tel accepts returns of products and services.
- (2) Only returns pre-authorized by pei tel are accepted. For further information on the authorization process, please see our website ([www.peitel.com](http://www.peitel.com)). Unauthorized returns will be rejected. All costs arising from this (including time, effort, and expense involved in inspection, testing, and/or analysis, return transportation costs, etc.) will be charged to the sender.
- (3) Only products and services for which the invoice was issued in the last 30 days are eligible for return.
- (4) pei tel will decide after the return is received whether it is in perfect condition. Products and services are considered to be in perfect condition if:
  - a) all seals are intact (undamaged)/unopened,
  - b) no customer-specific adhesive labels and/or additional signage or writing are attached,
  - c) if pei tel has delivered in an outer package, the return must also be delivered with outer packaging,

- d) the original manufacturer packaging (inside the outer package) is free of any damage whatsoever, and
  - e) programmed devices must be reset to the factory settings.
- (5) Orders supplied for specific contracts or projects or special orders of any kind (e.g., replacement parts) are not eligible for return. Furthermore, the following products and services are excluded from returns:
- a) software and licenses,
  - b) cables and cords cut to customer-specific lengths,
  - c) products and services that were explicitly ordered on a customer-specific basis or were configured on a customer-specific basis in the same way,
  - d) products not kept permanently in stock by pei tel (manufacturer orders),
  - e) products and services that are sold as "Last Time Buy" or have already been discontinued, and
  - f) products and services with a total merchandise value below 150.00 euros (net) or where the total merchandise value of the return exceeds 2,500.00 euros (net).
- (6) pei tel reserves the right to base the credit issued on the current price on that date.
- (7) A restocking fee of 20% of the original invoiced amount applies to all returns.
- (8) Products and services that do not comply with the terms and conditions mentioned in points 3 through 5 hereof will be returned to the sender at the sender's expense.
- (9) Should a decision by the manufacturer of the returned products and services be necessary, pei tel reserves the right to withhold credit until the matter has been clarified on a final basis.

## **VII. Passage of Risk**

- (1) Delivery shall be from our plant or warehouse (Incoterm EXW) unless otherwise expressly agreed in text form between us and the customer. In this case, the risk of accidental loss and accidental

deterioration of the items to be supplied shall pass to the customer after they have been made available for pick-up once the customer has received notice that the items are available. In all other cases, the risk of accidental loss and accidental deterioration of the items to be supplied shall pass to the customer when the items are handed over to the freight carrier. The risk of accidental loss and accidental deterioration of the items to be supplied shall be borne by the customer even if they are supplied in installments or if, contrary to our usual practice, we have agreed to provide other services, such as costs of providing the items, transportation costs and/or public levies (taxes, charges, customs duties, etc.), except where delivery is made in our own vehicles or with our own means of transport. If shipping is delayed for reasons that fall within the customer's sphere of responsibility, the risk passes to the customer as of the day on which the goods are ready to ship.

- (2) If the customer so requests, we will take out transportation insurance coverage for the consignment or partial consignment; the costs incurred for this shall be borne by the customer.
- (3) If we have agreed with our customer that we will ship our products and services, we shall select the shipping method and the transportation route unless we have agreed otherwise in text form with our customer. The provisions of Sec. IV hereof apply in this case as well.

#### **VIII. Retention of Title, Extended Retention of Title**

- (1) The products and services supplied shall remain our property until such time as the purchase price and any other present or future claims due to us from the customer in association with the business relationship have been paid in full. If the customer acts in breach of contract, including but not limited to default in payment, we are entitled to take back the items supplied. If we take back the items we have supplied, this constitutes rescission of the contract. We are authorized to sell or otherwise dispose of any such items that we have taken back, with the proceeds thereof being offset against the customer's liabilities less reasonable costs of sale or other disposal.
- (2) The customer is obligated to treat the products and services that we supply with care; in particular, the customer is obligated to insure them adequately against loss, damage and destruction, e.g. fire, water and theft, at replacement value at its own cost. The customer hereby assigns its claims under the insurance policies to us. We accept such assignment.

The customer shall perform any maintenance and/or inspection work that may be necessary in good time at its own cost.

- (3) The customer is not permitted to pledge the products and/or services that are still our property or to transfer title thereto by way of security. In the event of attachment or other third-party intervention, the customer shall notify us in text form without delay so that we can bring a legal action pursuant to Sec. 771 of the German Code of Civil Procedure (Zivilprozessordnung, ZPO). If the third party is unable to reimburse us for the court and out-of-court costs of a legal action pursuant to sec. 771 ZPO, the customer shall be liable for any shortfall that we incur thereby.
- (4) Subject to the provisions set out below, the customer is entitled to resell the products and services supplied in the normal course of business; however, it hereby assigns to us any and all claims which inure to it from resale against its customers or third parties, irrespective of whether the item supplied has undergone further processing before resale, in the amount of the final invoice amount (including VAT) of our claim, this taking precedence over the remaining portion of its claims. The customer is authorized to collect on these claims even after they have been assigned. This shall have no effect on our authority to collect on the claims ourselves. We do, however, undertake not to collect on the claim as long as the customer meets its payment obligations out of the proceeds generated and does not fall into default of payment and in particular as long as no application for the opening of composition or insolvency proceedings has been filed, nor have payments been discontinued. If this is the case, however, we may demand that the customer provide us with details of the claims assigned and their debtors and that it provide whatever information is necessary to permit collection, furnish us with the associated documents and notify the debtors (third parties) of the assignment.
- (5) At our request, the customer shall provide evidence regarding each of the claims assigned to us and notify its debtors of such assignment, calling on them to pay us up to the amount of our claims against the customer.
- (6) Any processing or modification that the customer carries out on the products and/or services that we have supplied subject to retention of title is always deemed to be carried out on our behalf without our incurring any liabilities as a result thereof. If the products and/or services that we have supplied subject to retention of title are processed with other items that are not our property, we acquire co-ownership rights in the new item pro rata relative to the ratio of the value of the products and/or services that we have supplied (final invoice amount including VAT) to the other items processed at the time of processing. In all other respects, the same shall apply to the item created as a result of the processing as to the products and services supplied subject to reservation.

- (7) If the products and/or services that we have supplied subject to retention of title are inseparably mixed or combined with items that are not our property, we acquire co-ownership rights in the new item pro rata relative to the ratio of the value of the products and/or services that we have supplied (final invoice amount including VAT) to the other items mixed or combined at the time of mixing or combining. If the goods are mixed or combined such that the customer's item must be regarded as the main item, the customer shall be deemed to have granted us pro rata co-ownership. The customer shall preserve our sole title or co-ownership thereby created on our behalf. The customer is entitled to dispose of the products and services newly created through processing, modification, combining or mixing in the normal and proper course of business as long as it fulfills its obligations under the business relationship with us in a timely manner.
- (8) However, under no circumstances is the customer authorized to resell or otherwise dispose of these new products and services subject to an agreement prohibiting assignment with its customer, or to pledge them or transfer title thereto by way of security. The customer hereby assigns to us as security any and all claims that inure to it from the sale of these new products in which we hold ownership rights to the extent of our share of ownership of the products and services sold. If the customer combines or mixes the products and/or services supplied with a principal item, the customer hereby assigns to us its claims against the third party up to the value of the products and/or services supplied by us. We hereby accept such assignments.
- (9) We undertake to release the items of security to which we are entitled at the customer's request to the extent that the realizable value thereof exceeds our claims against the customer that are secured thereby by more than 10%; we are responsible for selecting the items of security to be released.

## **IX. Liability for Defects**

- (1) Claims for defects on the part of the customer presuppose that the customer has duly met its obligations to examine the goods and complain of any defects pursuant to Sec. 377 HGB. Defects must be reported in text form. During the period from delivery until the defect is reported, the customer shall bear the burden of proof that the products and/or services supplied have been handled properly and stored in a manner suited to the product.
- (2) The customer shall be entitled to warranty claims only if it provides us without delay with whatever information we deem necessary to ascertain the cause of the fault in our products

and/or services and the extent of our responsibility or enables us to conduct our own investigations, including on site. If no fault is ascertained or if no fault can be found, the customer shall bear the costs of investigating the cause of the alleged error.

- (3) No guarantees of specific quality and/or durability for particular features (warranted characteristics) or other independent guarantee obligations are provided or assumed unless they have been agreed as such in text form. As a basic principle, our product description is the only specific quality deemed to have been agreed. Public statements, adjustments or advertisements do not constitute any statement of a particular quality in accordance with the contract. If the customer receives defective assembly and/or installation instructions, our obligations are limited to supplying assembly and/or installation instructions that are free of defects, and this also applies only if the defect in the assembly and/or installation instructions does not conflict with proper assembly and/or installation.
- (4) The customer receives no warranties or guarantees in the legal sense from us. Nothing herein shall affect any manufacturer's warranties.
- (5) The customer shall forfeit any rights associated with defects if it fails to report defects properly and/or in due time unless we have fraudulently concealed the defect.
- (6) The customer is not entitled to warranty rights for defects if the items supplied have been used or are agreed to be obsolete. The same applies to deviations, including but not limited to deviations in dimensions, thicknesses, weights, performance data or color shades, that lie within tolerance levels customary within the industry and to trivial reductions in the value of the products and/or services or their fitness for a specific purpose.
- (7) Where there is a defect in the products and/or services, we are entitled to effect a cure either by remedying the defect or supplying a new item that is not defective, at our discretion. In the event that the defect is to be remedied, we shall bear all necessary expenses incurred for that purpose, including but not limited to transportation, travel, labor and material costs, insofar as these are not increased as a result of the items supplied having been moved to a place other than the place of performance.
- (8) If the cure is unsuccessful, the customer is entitled to demand rescission or a reduction in price, at the customer's discretion.

- (9) We shall be liable as provided for by statute only insofar as the customer asserts claims for damages that are based on intent or gross negligence, including intent or gross negligence on the part of our representatives or our vicarious agents. Our liability for damages is limited to the foreseeable and typically occurring damage and/or loss provided that we have not breached the contract with intent.
- (10) In all other respects, our liability shall be as provided for by statute insofar as we have culpably breached a material contractual duty; in any event, however, liability for damages is limited to the foreseeable and typically occurring damage and/or loss.
- (11) Nothing herein shall affect liability for culpable loss of life, bodily injury or impairment of health; this also applies to mandatory liability under the German Product Liability Act (Produkthaftungsgesetz, ProdHaftG).
- (12) Liability is ruled out except where otherwise provided above.
- (13) The customer shall have recourse claims against us under Sec. 478 BGB only insofar as the customer has not entered into any agreements with its customer that go beyond the scope of the claims for defects provided for by statute.
- (14) The limitation period for claims regarding defects is 12 months, calculated from the passage of risk.
- (15) Nothing herein shall affect the limitation period in the event of recourse involving a supplier pursuant to Sec. 478, 479 BGB; it shall expire no earlier than two months after the point in time at which the customer has fulfilled the consumer's claims.

## **X. Returns, Execution of a Cure**

- (1) Defective products must be sent or delivered using the RMA portal (<https://rma.peitel.com/en>) or stating the model and serial number, along with a copy of the delivery or billing documents and a detailed description of the error, to pei tel Communications GmbH, Rheinstraße 17 A, 14513 Teltow, Germany, or, if agreed, to the supplier.

- (2) Replacement of individual parts, component assemblies or entire units or devices does not lead to any new warranty period with respect to claims and rights relating to defects. This does not apply to limitation of claims with regard to the parts concerned by the remediation of defects.
- (3) In all other respects, our then-current terms and conditions of return apply. You can view these terms and conditions on the RMA portal or request a copy by e-mailing [service@peitel.com](mailto:service@peitel.com).

## **XI. Entire Liability**

- (1) We do not accept any liability for damages over and above what is provided for in Sec. IX, irrespective of the legal nature of the claim asserted. This includes but is not limited to claims for damages arising from *culpa in contrahendo*, owing to other breaches of duty or tortious claims for compensation for property damage pursuant to sec. 823 BGB. In the case of calls for tenders and awarding of contracts (public or under private law), the provisions of the German Construction Contract Procedures (Vergabe- und Vertragsordnung für Bauleistungen, VOB) or of the Regulations on Contract Awards for Public Supplies and Services (Vergabe- und Vertragsordnung für Leistungen, VOL) do not apply; our general terms and conditions of business apply instead. We are not liable for damage and/or losses affecting other than the item supplied itself; in particular, we are not liable for loss of data, lost profit or other financial losses incurred by the customer.
- (2) Nothing herein shall affect our liability for loss of life, bodily injury or impairment of health where these fall within our sphere of responsibility or our mandatory liability pursuant to the German Product Liability Act.
- (3) The limitation pursuant to paragraph (1) also applies to the extent that instead of a claim for compensation for the damage and/or loss, the customer demands reimbursement for expenses which were made to no avail in lieu of performance.
- (4) To the extent that liability for damages toward us is ruled out or limited, this also applies with regard to the personal liability for damages of our employees, representatives and vicarious agents.
- (5) We are not liable for the loss of data or for the restoration of data or other consequential damage and/or losses resulting therefrom if the damage and/or loss would not have occurred if proper data backups had been performed in the customer's sphere. Proper data backups presuppose

that the customer backs up its data daily in accordance with the state of the art, and in particular makes backup copies in a machine-readable form so that the data can be restored with reasonable effort and expense. Liability for loss of data is limited in all cases to the typical effort and expense associated with restoration that would be incurred in the case of proper backing up of data.

- (6) We will not provide reimbursement for any costs of examination and handling in the case of failed delivery or delivery that is not in accordance with the contract. In the event that, as a result of failed deliveries to us or deliveries to us that are not in accordance with the contract, our customers are able to demand damages, additional costs or costs of examination regardless of existing provisions limiting liability, our supplier is obligated to reimburse us for these costs and to indemnify us and hold us harmless from and against such claims.

## **XII. Payment**

- (2) As a basic principle, delivery shall take place only after prior payment (payment in advance) unless otherwise agreed.
- (3) In the case of delivery on account, the details must be agreed separately. Should the customer not comply with the separately agreed payment terms, invoices are due and payable immediately unless otherwise agreed. If payment via SEPA direct debit was agreed and the customer has issued a corresponding SEPA direct debit mandate to us, the following applies:
- a) The upcoming direct debit is typically announced by us together with the invoice (or via another communication channel agreed with the customer) by no later than one (1) calendar day before the direct debit falls due (prenotification). The amount debited may, in an individual case, vary from the amount communicated in the statement/invoice or prenotification if the customer has received credits and/or corrections or individual transactions were canceled during the period between creation of the statement/invoice or transmission of the prenotification and the due date. The amount debited may, in an individual case, vary from the amount communicated in the individual statement/invoice or prenotification if the customer has issued a SEPA mandate to us as a framework mandate for multiple contractual relationships and the customer receives, as agreed, a separate statement/invoice – and, accordingly, separate prenotification – for each contractual relationship, but the respective statement/invoice amounts have the same due date. In this

case, the full amount (= total of both statements/invoices) will be collected as of the due date. The customer is obligated to ensure that there are sufficient funds in the bank account designated in the SEPA mandate and that we can collect the sums due. This obligation applies even if the customer does not receive a prenotification or does not receive a prenotification in due time in an individual case.

- b) In the case of return bank debits or in similar cases of failed payment actions, we will pass along any bank fees incurred to the customer unless the customer is not at fault or demonstrates that the actual costs incurred were lower.
- (4) Payment is deemed to have been made when we are able to use the amount in question.
- (5) Any prompt payment discounts that may have been granted can be applied only if all invoices that are due have been paid on time. The time determining whether this is the case is the time of receipt of payment by us.
- (6) If the customer falls into default of payment, we are entitled to charge annual interest at a rate of 9% above the basic rate of interest starting the day after default commences. We reserve the right to provide evidence of and charge for a higher amount of damage and/or losses due to default. In the event of default of payment, all discounts, prompt payment discounts and other forms of compensation are forfeited.
- (7) All claims are due and payable immediately if the customer falls into default of payment or culpably fails to comply with other material obligations arising out of the contract or if we become aware of circumstances that may lower the customer's creditworthiness, particularly if the customer has discontinued payments and/or insolvency proceedings are pending. In these cases, we are entitled to hold back or refuse to perform any deliveries that are still outstanding or to perform these only in exchange for advance payment or provision of security.

### **XIII. Use of the Products and Services**

The products and services are intended for the usual commercial use in accordance with the operating instructions, and not for use in critical safety or security systems, nuclear power plants, military installations or medical equipment with life-sustaining functions or to manufacture weapons. No liability is assumed for any use in these areas.

**XIV. Industrial Property Rights and Copyrights**

- (1) We are liable for claims arising from infringement of third-party property rights and copyrights (hereinafter: Property Rights) in using the products and/or services in the manner stipulated in the contract only if at least one of such rights from a family of property rights has been published either in Germany or by the European Patent Office. Insofar as any third party asserts legitimate claims against the customer on the grounds of the infringement of Property Rights associated with products and/or services supplied by us and used in accordance with the contract, we are liable to the customer within the period stipulated in Sec. VIII No. 13 as follows:
- a) We will, at our discretion, either obtain a right of use for the products and/or services in question or modify these such that the Property Right is not infringed or replace them. If it is not possible for us to do this on reasonable terms, the customer shall have its statutory rights of rescission and reduction in price.
  - b) Our duty to pay damages shall be as stipulated in Sec. IX.
  - c) The obligations stipulated above shall exist only insofar as the customer notifies us in text form, without delay, of the claims asserted by the third party and does not acknowledge an infringement and if the rights to take any measures to defend against such claims and to negotiate a settlement remain reserved to us. If a customer stops using the items supplied on the grounds of loss mitigation or other good cause, it is obligated to notify the third party that stopping use does not constitute acknowledgment of a Property Right infringement.
- (2) The customer has no claims insofar as it bears responsibility for the Property Right infringement.
- (3) The customer moreover has no claims insofar as the Property Right infringement is caused by specific specifications of the customer, by an application that we were unable to foresee or because the customer changed the items supplied or used them in conjunction with products and/or services that we did not supply.
- (4) The customer shall indemnify us and hold us harmless from and against all third-party claims except where we are liable under Sec. XI (1) – (5) hereof.

- (5) The parties to the contract shall notify each other in text form, without delay, of any risks of infringement and alleged infringements and provide each other with an opportunity to counter such claims by mutual agreement.
- (6) At the customer's request, we will provide information on what Property Rights and Property Right applications – both published and unpublished, our own and those used under license – are used in the products and services supplied.

#### **XV. Use of Company Logos**

- (1) The customer agrees that we may use the customer's name and company logo for reference purposes. The customer's company logo will be designated as a reference to this end and, in the event that the business relationship ends, will be designated accordingly with an additional note starting the year after the relationship ends (... until + year). This does not establish any further right to provision of information regarding the contractual relationship or the details thereof. The customer is permitted to revoke this authorization in text form with effect for the future. Advertising materials that have already been prepared or commissioned by us at the time of revocation are not affected by the revocation of authorization.
- (2) The customer is permitted to use our name and company logo exclusively for reference purposes during the existence of the business relationship, with a note indicating the purpose thereof as a reference, unless we expressly object in text form to any such use.

#### **XVI. Export Restrictions, Prohibitions**

- (1) Provision of products and/or services to the customer is subject to the statutory provisions and the regulations set by the authorities. These include national and international provisions, export control provisions and embargoes, including to the extent that these have been ordered by organizations (European Union, United Nations, etc.) or third countries. In the event of unilateral orders issued by third countries, this provision applies only if noncompliance will lead to a market restriction or adverse effect on our company or our employees and executive and supervisory bodies and this is not reasonable for us in our reasonably exercised discretion.

- (2) The parties to the contract agree to supply all information and documents required for the export, transportation or import. Delays due to export inspections or reviews or permit or authorization procedures shall invalidate time limits and delivery times. If necessary permits or authorizations are not granted, the contract is deemed not to have been entered into with regard to the portions thereof affected; claims for damages are ruled out in this regard and with respect to the aforementioned time limit overruns. The costs of any permit or authorization procedure or export permit shall be borne exclusively by our customer.