

# General Terms and Conditions of Contracts, Services and Delivery of WEBOMATIC Maschinenfabrik GmbH for Companies

## Status January 2012

### 1. Scope

1.1: These General Terms and Conditions of Contracts and Delivery shall apply exclusively to companies within the meaning of § 14 BGB [German Civil Code] i.e. natural persons or legal entities that purchase the goods or service for commercial or professional purposes.

1.2: The terms and conditions set forth below shall apply exclusively to our business relations with our customers, also with respect to information and consultancy. Where our General Terms and Conditions are implemented in a transaction with a customer, they shall also apply to all further business relations between the customer and ourselves unless otherwise expressly agreed in writing. Differing terms and conditions of the customer shall only apply if expressly acknowledged by us in writing. Our silence regarding such differing terms and conditions shall not be deemed in particular to be acknowledgement or consent, and this shall also apply to future contracts. Our General Terms and Conditions shall apply in place of any conditions of purchase of the customer, also where such conditions of purchase stipulate that acceptance of an order is deemed to be the unconditional recognition of its conditions of purchase, or we supply, after the customer has indicated the validity of its general terms and conditions of purchase, unless we have expressly waived the validity of our own General Terms and Conditions. By accepting our order confirmation, the customer expressly acknowledges that it waives its legal objection derived from the conditions of purchase.

1.3: If general agreements are concluded by the parties, these shall take precedence. They shall be supplemented by these General Terms and Conditions unless more specific regulations are agreed.

### 2. Information / Advice / Properties of the products

2.1: Information and explanations regarding our products shall be provided solely on the basis of our experience to date. Values specified in this context shall be deemed average values of our products.

2.2: Any information about our products, especially illustrations, drawings, measurement and equipment data, and other data, especially technical data, must be regarded as approximate average values. Specifications without tolerances as included in catalogues and/or brochures are subject to deviations and changes which are customary in the industry and/or due to production, especially due to tolerances of raw materials and/or technical developments.

2.3: Our operating instructions are drawn up with the care customary in the industry but do not release our customers from the obligation to inspect the products carefully regarding their suitability for the purpose intended by the customers.

2.4: We only assume an obligation to provide advice on the basis of a separate, written consultancy agreement.

2.5: Reference to standards, similar technical regulations and technical information, descriptions and illustrations of the delivery item in quotations and brochures and our advertising shall only represent a property of our products when we have expressly declared the quality to be a "property of the product"; these are otherwise non-binding general specifications.

2.6: We shall only be deemed to have given a guarantee if we have designated a property and/or performance as "guaranteed by law".

2.7: We shall retain the title and copyright to samples, illustrations, drawings, indications of weight and measurement, performance and other property specifications, estimates of cost and other documents about our products and services. The customer undertakes not to disclose the samples and/or documents specified in the foregoing sentence to third parties unless we give our express written consent.

2.8: Where samples are processed or supplied, remuneration in accordance with our general remuneration terms for processing or supplying samples shall be deemed agreed. These terms shall be made available to the customer at any time free of charge.

2.9: We shall assume no liability for the usability of our products for the customer's intended purpose other than liability prescribed by law unless we have agreed otherwise in writing with the customer.

### 3. Specimens / Samples

Properties of specimens or samples manufactured shall only become an integral part of the contract if expressly agreed in writing. The customer is not authorised to use and pass on specimens or samples. Our specimens and samples shall remain our property unless purchase was expressly agreed, and may not be used or made available to third parties without our written consent. All copyrights, design rights and utility model rights to samples or specimens shall remain with the holders of the rights despite the samples and specimens being provided to the customer.

### 4. Conclusion of a contract / Scope of delivery / Delivery from stock / Procurement risk and guarantee / Acceptance

4.1: Our quotations are subject to change unless they are expressly designated binding or contain binding commitments. They are requests for orders. A contract is created – also in day-to-day business – only when we confirm the customer's order in writing or text form (i.e. also by telefax or email). Where delivery is made immediately, our confirmation can be replaced by our invoice.

4.2: Our order confirmation shall be binding for the subject matter of the supply contract.

4.3: All agreements, collateral agreements, assurances and contract amendments shall only be valid when given in writing. This shall also apply to cancellation of the written form requirement. Verbal amendments or modifications of the contract shall be invalid. This shall not affect the precedence of an individual agreement (§ 305 b BGB).

4.4: In the event of call orders or acceptance delays caused by the customer, we shall be authorised to procure the material for the entire order and to manufacture the total quantity ordered immediately. After the order is placed, no change request from the customer can therefore be considered unless this was expressly agreed in writing.

4.5: The customer must advise us in writing in due time prior to conclusion of the contract of any special requirements of our products.

4.6: We are authorised to make excess or short deliveries in terms of unit or weight of up to 5 % compared with the order volume.

4.7: We shall only be obliged to deliver from our own stock.

4.8: Assumption of a procurement risk does not lie solely in our obligation to deliver an object which is only defined by its type.

4.9: We shall only assume a procurement risk by virtue of a separate written agreement stating "we assume the procurement risk...".

4.10: If acceptance of the products or the shipment is delayed for a reason for which the customer is responsible, we shall be authorised, after setting an extension of time of 14 days which has expired, at our option to request immediate payment of the purchase price or to rescind the contract or refuse performance and request damages instead of full performance. The time limit must be given in writing but we shall not be required to refer again to our rights under this clause. In the event of our claiming damages, the damages to be paid shall amount to 30 % of the net delivery price for standard goods and 100 % of the net delivery price for custom-made products which cannot otherwise be used. This shall not affect any right of either party to prove a different amount of damage or that no damage was incurred. There is no connection between the reversal of the burden of proof and the foregoing stipulations.

4.11: If shipment is delayed at the customer's request or for reasons for which the customer is responsible, we shall be authorised to store the goods, beginning on expiry of the period set in the written notice that the goods are ready for shipment, and to invoice the costs incurred for this at 0.5 % of the net invoice amount of the stored goods for each week or part thereof. This shall not affect the assertion of any further rights. The customer shall have the right to prove that no costs or considerably lower costs were incurred.

Furthermore, we shall be authorised, after the time limit expires, to dispose of the contractual goods otherwise, and to deliver to the customer again after a reasonable time limit.

4.12: If an order or call for delivery is delayed by the customer, we shall be authorised to postpone the delivery by the same period of time as the customer is behind schedule plus a scheduling period of 4 working days at the place of our registered office.

### 5. Delivery / Delivery time / Default in delivery / Return of goods

5.1: Binding delivery dates and periods must be agreed expressly and in writing as binding. We shall make every endeavour to meet delivery dates and periods that are not binding or approximate (approx., about etc.).

5.2: Delivery and/or service periods shall begin with the customer's receipt of our order confirmation but not before all details about the execution of the order are clarified and all other requirements to be fulfilled by the customer are met, in particular advance payments or securities agreed are paid or provided in full. This shall apply to delivery and/or service dates. If the customer requests changes after placing the order, a new, reasonable delivery and/or service period shall begin when we confirm the change.

5.3: Deliveries may be made prior to expiry of the delivery period. The date of delivery for obligations to be performed at the debtor's place of business shall be deemed the date on which the products are reported ready for shipment, otherwise the date on which the products are sent. The foregoing stipulations do not authorise us to make partial deliveries.

5.4: The customer's interest in our performance shall lapse for lack of any other written agreement only if we fail to deliver material parts or deliver with delay.

5.5: Deliveries shall be made – unless other-wise agreed – at our option in the case of long-term contracts when called, and in the case of single contracts, within the agreed delivery period. We can deliver the goods on the 1st working day after conclusion of the contract and at any time within the delivery period during the customer's normal business hours.

5.6: If we default in delivery, the customer must first set us a reasonable extension of time of at least 14 days – unless this is unreasonable – to perform the contract. If this elapses without result, damage claims for breach of duty – for whatever reason – shall exist only as stipulated in 5.9 and 11.

5.7: We shall not be in default as long as the customer is in default in fulfilling its obligations towards us; this shall also include obligations under other contracts.

5.8: We shall not be obliged to deliver for as long as the means of transport to be provided by the customer is not available unless we have undertaken to provide the means of transport or it has been agreed that the obligation is to be performed at

the creditor's place of business. However, we shall be authorised, where the shipping order or call order can be carried out, to arrange delivery with our own transport or hire transport. In this case, the goods shall be transported at the customer's risk.

5.9: If the customer incurs damage as a result of our default, the customer shall have the right, to the exclusion of any further claims, to request compensation for default. It shall amount to 0.5 % for each full week of delay but in total to 5 % at most of the value of the part of the complete delivery which, as a result of default, cannot be used in due time or according to the contract. Any further compensation from us for damages due to default shall be excluded. This shall not apply in the case of a fraudulent or intentional act by us, to claims for injury to life, limb or health, and for default, and in the case of an agreed fixed delivery date within the meaning of the law and the assumption of a procurement risk.

### 6. Force majeure / Delivery subject to punctual delivery to us on the part of our sub-contractors

6.1: If we do not receive correctly or in due time a delivery or service from our sub-contractors to allow us to provide the service and/or delivery which is due from us under the contract, despite due and proper stocking, for reasons for which we are not responsible, or events of force majeure occur of significant duration (i.e. of longer than 14 calendar days), we shall notify our customer in writing or text form in due time. In such case, we shall be authorised to postpone the delivery for the duration of the obstruction, or to rescind the contract in whole or in part for that part of the contract not yet fulfilled if we have met our foregoing duty to provide information and have not assumed a procurement risk. Events of force majeure are strikes, lock-outs, official intervention, power shortages and shortages of raw materials, transport bottlenecks through no fault of our own, company obstructions through no fault of our own e.g. due to fire, water and damage to machinery and any other obstructions that considered objectively were not caused by our negligence.

6.2: If a delivery and/or service date or delivery and/or service period is agreed with binding force and the agreed delivery and/or service date or the agreed delivery and/or service period is exceeded due to events according to 6.1., the customer shall be authorised after a reasonable extension of time has elapsed without result to rescind the contract for that part of the contract not yet fulfilled, if the customer cannot be objectively expected to adhere further to the contract. The customer shall have no further claims, especially claims for damages, in this case.

6.3: The above provision according to 6.2 shall apply accordingly if a customary delivery and service period was exceeded for the reasons stated in 6.1, also without contractual agreement of a fixed delivery and/or service date.

### 7. Shipment / Passing of risk

7.1: Unless otherwise agreed in writing, the delivery shall be shipped ex works, and any shipment by us if agreed, uninsured.

In the case of an obligation to be performed at the debtor's place of business, and in the case of an obligation to be performed at the debtor's place of business where the debtor must dispatch the goods, the delivery shall be shipped at the customer's risk and expense.

7.2: We reserve the right to choose the route and means of transport where shipment is agreed. We shall, however, endeavour to take the customer's wishes into account with respect to the route and type of shipment. Any additional expenses as a result – also where delivery freight paid is agreed – shall be borne by the customer. If shipment is delayed at the customer's request or through the customer's fault, we shall store the goods at the customer's expense and risk. In this case, notice that the goods are ready for shipment shall be deemed equivalent to shipment.

7.3: The risk of accidental loss or accidental deterioration shall pass to the customer when the products to be delivered are handed over to the customer, forwarder, freight carrier or other firms entrusted with shipping the products but at the latest when the products leave our works, warehouse or office unless performance of the obligation at the creditor's place of business is agreed. The foregoing shall also apply if an agreed partial delivery is carried out.

7.4: If delivery is delayed because we assert our right of retention due to the customer's default in payment in whole or in part or due to another reason for which the customer is responsible, the risk shall pass to the customer at the latest as of the date the customer is notified that the goods are ready for shipment.

### 8. Notice of defects / Breach of duty / Warranty

8.1: The customer must give us written notice of recognisable material defects immediately but at the latest 12 days after collection, in the case of delivery ex works, otherwise after delivery. Notice of hidden defects must be given to us immediately after they are discovered but at the latest within the warranty period under 8.6. A notice of defects that fails to comply with requirements of time shall exclude any claim by the customer for breach of duty due to material defects. This shall not apply in the case of a fraudulent or intentional act by us, in the event of injury to life, limb or health, or the assumption of a guarantee for absence of defects or liability according to the "Produkthaftungsgesetz" [German Product Liability Act].

8.2: The transport operator must also be notified of any material defects recognisable on delivery, and the recording of the defects must be arranged by the transport operator. The notice of defects must include a description of the defect which will be specified as far as possible by the customer. A notice of defects that fails to comply with requirements of time shall exclude any claim by the customer for breach of duty due to defects. This shall not apply in the case of a fraudulent or intentional act by us, in the case of injury to life, limb or health or the assumption of a guarantee for the absence of defects, or liability according to the "Produkthaftungsgesetz" [German Product Liability Act].

If defects in number and weight were already recognisable upon delivery according to the foregoing duties to inspect, the customer must complain to the transport operator upon receipt of the products and have this complaint certified. Failure to give notice of defects in due time shall also exclude any claim by the customer for breach of duty due to defects. This shall not apply in the case of an intentional or fraudulent act by us, in the case of injury to life, limb or health or the assumption of a guarantee for the absence of defects or in the case of liability according to the "Produkthaftungsgesetz" [German Product Liability Act].

8.3: When handling, processing, combining or mixing with other goods begins, the products delivered shall be deemed approved by the customer according to the contract. This shall also apply if the products are shipped on from their original destination. Before any of the above activities begin, the customer shall be responsible for clarifying through appropriate checks in terms of scope and method whether the delivered products are suitable for the processing purposes, process purposes and other purposes intended by the customer.

8.4: The customer must give notice in writing immediately of any other breach of duty, setting a reasonable time limit for remedy, before asserting other rights.

8.5: We shall remedy any defects for which the customer itself is responsible, and eliminate any unjustified complaints on behalf of and at the expense of the customer, if the customer is a businessman within the meaning of the "Handelssgesetzbuch" [German Commercial Code].

8.6: Unless breach of duty relates by way of exception to the performance of work by ourselves, the contract may not be rescinded if our breach of duty is immaterial.

8.7: We shall provide a warranty for verifiable material, production or construction defects unless otherwise expressly agreed or in the case of §§ 478, 479 BGB (right of recourse in the supply chain) for a period of one year, calculated as of the date the risk passes (see 7), in the case of refusal to accept or take delivery by the customer as of the date of the subsequent notice that the goods are ready for delivery. This shall not apply to damage claims under a guarantee, the assumption of a procurement risk, injury to life, limb or health, fraudulent or intentional act, or if, in the cases of § 438 (1) 2 (buildings and objects for buildings), and § 634 a (1) 2 (building defects) BGB, a longer limitation period is stipulated.

8.8: If the customer or a third party rectifies a defect incorrectly, we shall not be liable for the resulting consequences. This shall also apply to any changes of the delivery item undertaken without our prior consent.

8.9: Further claims by the customer for or in connection with defects or consequential damage caused by a defect, for whatever reason, shall exist only subject to the provisions of 11. unless these are damage claims resulting from a guarantee which is intended to cover the customer against the risk of any defects. In this case too, however, we shall be liable only for typical and foreseeable damage.

8.10: Our warranty (claims for breach of duty due to defective performance in the case of material defects) and liability arising herefrom shall be excluded if defects and damages connected therewith cannot be proven to be due to defective material, defective design or defective execution or defective instructions on use. This shall not apply in the case of fraudulent or intentional conduct on our part, or injury to life, limb or health, or liability according to the "Produkthaftungsgesetz" [German Product Liability Act]. Warranty and liability arising herefrom shall be excluded in particular with respect to the consequences of incorrect use or exceptional wear and tear of the products, excessive use or inappropriate storage conditions, for example, the consequences of chemical, electromagnetic, mechanical or electrolytic influences that do not correspond with expected average standard influences.

8.11: We shall not provide a warranty for parts which are subject to wear and tear when products are used correctly and/or have to be regularly exchanged by the customer to maintain their proper function or are subject to use or wear and tear, and we shall not provide a warranty for consumables whose 'best before' date is limited or has expired, where malfunction is caused by wear and tear or because the 'best before' date has expired. This shall also apply to products where the defect occurs after the 'best before' date has expired.

8.12: Claims based on defects shall not exist in the case of only a minor deviation from the agreed or customary quality or usefulness.

8.13: Breach of duty, especially in the form of material defects, shall only be recognised when given in writing.

### 9. Prices / Payment terms / Objection of uncertainty

9.1: All prices are on principle quoted net in EURO and exclude packaging, freight, and any reasonable extra charge for reduced quantities ex works or warehouse, and value added tax at the legally valid rate which shall be borne by the customer.

9.2: Services that are not an integral part of the agreed scope of delivery shall be charged, unless otherwise agreed, on the basis of our respectively valid general price lists.

9.3: We are authorised to increase remuneration unilaterally and reasonably (§ 315 BGB) where material procurement costs, wage and ancillary wage costs as well as energy costs and costs due to environmental charges are increased, if more than

four months elapses between conclusion of the contract and delivery. Such an above-mentioned increase shall be excluded if the increase in costs for the above-mentioned factors is set off by a reduction in costs for factors other than those mentioned above with respect to the overall cost burden for the delivery. If the above-mentioned cost factors are reduced without the increase in costs being set off by the increase in other above-mentioned costs, this reduction in costs shall be passed on through a price reduction.

**9.4:** If, according to the contract, we bear the freight charges by way of exception, the customer shall bear any additional costs arising from increases in freight rates after the contract was concluded.

**9.5:** Unless otherwise agreed, our invoices shall be payable within 30 working days of delivery of the goods or provision of the service, without deduction of any kind.

**9.6:** If the customer fails to make payment, the customer shall be in default, even without a reminder, within 31 working days of delivery or provision of the service.

**9.7:** Once in default, default interest shall be charged of 8 % above the respective base rate when the claim for payment falls due.

**9.8:** The date payment is received by us or credited to our account shall be deemed the payment date. We reserve the right to assert damage in excess of this.

**9.9:** The customer's default in payment shall cause all claims for payment under the business relationship with the customer to become due immediately. Regardless of any agreements to defer payments, agreements on the term of bills of exchange or payment by instalment, in this case all the customer's liabilities due to us shall become due for payment immediately.

**9.10:** If payment terms are not met or circumstances known or recognisable that in our proper commercial judgement give rise to justified doubt about the customer's creditworthiness, also including such facts that already existed when the contract was concluded but which were unknown to us or did not have to be known to us, we shall be authorised, notwithstanding further legal rights in such cases, to cease further work on current orders or delivery and to request advance payments or the provision of securities which are acceptable to us for deliveries still outstanding and, after expiry of a reasonable extension of time to provide such securities without result, to rescind the contract, irrespective of other legal rights. The customer shall be obliged to reimburse us for all damages incurred by the non-performance of the contract.

**9.11:** The customer shall have a right of retention or right of set off only with respect to those counter-claims that are not disputed or have been recognised by declaratory judgment.

**9.12:** The customer can only exercise a right of retention if its counter-claim relates to the same contract.

**9.13:** We shall only accept bills of exchange offered as an exception by way of express agreement and only on account of performance. We shall make discount charges from the due date of the invoice until the maturity date of the bill of exchange as well as charge costs for the bill of exchange. The customer must bear interest and the costs for the discounting or redemption of bills of exchange. With regard to bills of exchange and cheques, the date of their redemption shall be deemed the payment date. In the event of our company's bank refusing to discount a bill of exchange or in the event of reasonable doubt that a bill of exchange will be discounted during its term, we shall be entitled to request immediate payment in cash with the bill of exchange being taken back.

#### 10. Retention of title / Right of lien

**10.1:** We retain title to all equipment and goods we deliver (hereinafter referred to as a whole as "goods subject to retention of title") until all claims under the business relationship with the customer, including claims arising in the future from contracts concluded at a later date, are paid. This shall also apply to any balance in our favour when any or all claims by us are incorporated in a current account and the balance has been established.

**10.2:** The customer must insure the goods subject to retention of title adequately, in particular against fire and theft. Claims against the insurance arising from a case of damage relating to goods subject to retention of title are herewith assigned to us in the value of the goods subject to retention of title.

**10.3:** The customer is authorised to resell the delivered products in the normal course of business. The customer is not permitted to make other disposals, especially pledging or granting of equitable lien. If the goods subject to retention of title are not paid for immediately by third party buyers when resold, the customer shall be obliged to resell under retention of title only.

Authorisation to resell the goods subject to retention of title shall not apply a priori if the customer suspends payment or defaults in payment to us.

**10.4:** The customer herewith assigns to us all claims including securities and ancillary rights that accrue to the customer against the end user or third parties from or in connection with the resale of goods subject to retention of title. The customer may not reach an agreement with its purchasers that excludes or impairs our rights in any way or nullifies the claim's assignment in advance. When the goods subject to retention of title are sold with other items, the claim against third party buyers amounting to the delivery price agreed between ourselves and the customer shall be deemed assigned unless the amounts applicable to the individual goods can be determined from the invoice.

**10.5:** The customer shall be entitled to collect claims assigned to us until revoked by us, this revocation being admissible at any time. At our request, the customer shall be obliged to give us the information and documents in full required to collect assigned claims, and unless we do so ourselves, notify its buyers immediately of the assignment to us.

**10.6:** If the customer incorporates claims from the resale of goods subject to retention of title in a current account relationship with its buyers, the customer shall herewith assign to us any recognised closing balance in its favour in the amount which corresponds to the total amount of the claim from the resale of our goods subject to retention of title which was transferred to the current account relationship.

**10.7:** The customer must notify us immediately if the customer has already assigned claims to third parties from the resale of products delivered or to be delivered by us, especially due to real or unreal factoring, or made other agreements which can impair our current or future security interests according to 10.

In the case of unreal factoring, we shall be authorised to rescind the contract and request the products already delivered to be handed over. This shall also apply to real factoring if, according to the contract with the factor, the customer is not free to dispose of the purchase price of the claim.

**10.8:** In the event of conduct in breach of the contract through the customer's fault, especially in the case of default in payment, we shall be authorised – without first having to rescind the contract – to take back all goods subject to retention of title. The customer shall be obliged in this case to hand over the goods subject to retention of title immediately. We may at any time during normal business hours enter the customer's business premises to determine the stock of the goods we delivered. Taking back the goods subject to retention of title shall only involve rescinding the contract if we expressly state this in writing or this is expressly prescribed by obligatory statutory provisions. The customer must notify us immediately in writing of any third-party access to goods subject to retention of title or claim assigned to us.

**10.9:** If the value of securities existing for us according to the foregoing provisions exceeds the secured claims as a whole by more than 10 %, we shall be obliged at the customer's request to release securities at our option.

**10.10:** We handle and process goods subject to retention of title as manufacturers within the meaning of § 950 BGB without any obligation. If the goods subject to retention of title are processed or connected inseparably with other items that do not belong to us, we shall acquire co-ownership in the new article in the ratio of the invoice value for our goods to the invoice values for the other processed or connected items. If our goods are connected with other movable items into a uniform article that is deemed the principal article, the customer shall herewith already assign co-ownership thereof to us in the same ratio. The customer shall maintain ownership or co-ownership free of charge on our behalf. Rights of co-ownership accordingly arising shall be deemed goods subject to retention of title. The customer shall be obliged at any time at our request to provide us with the information required to assert our ownership or co-ownership rights.

#### 11. Exclusion / Limitation of liability

**11.1:** We shall not be liable, in particular not for claims by the customer for damages, for whatever legal reason, and/or for breach of duty from the obligation and tort.

The above exclusion of liability shall not apply if statutory liability is obligatory, and:

- in the case of own intentional or grossly negligent breach of duty and intentional or grossly negligent breach of duty by legal representatives or vicarious agents;
- in the case of violation of material contractual obligations (see below);
- in the event of injury to life, limb or health, also caused by legal representatives or vicarious agents;
- in the case of default if delivery and/or service by a fixed date was agreed;
- where we have assumed a guarantee for the quality of our goods or the outcome of a service, or a procurement risk, and in the case of liability under the "Produkthaftungsgesetz" [German Product Liability Act].

"Material contractual obligations" are obligations that protect the legal positions of the customer which are material to the contract and which have to be granted to the customer under the contract in terms of subject matter and purpose. Material contractual obligations are also obligations whose fulfilment makes the due performance of the contract possible in the first place, where the customer regularly relies on and may rely on compliance with such obligations.

**11.2:** In cases other than those specified in 11.1, we shall be liable for all damage claims asserted against us or reimbursement of expenses under this contractual relationship for negligent breach of duty, for whatever legal reason, but not in the case of slight negligence.

**11.3:** In the event of liability under 11.2 above and liability without negligence, especially given initial impossibility and defects of title, we shall be liable only for typical and foreseeable damage.

**11.4:** Liability for indirect damages and consequential damage caused by a defect shall be excluded unless we have violated a material contractual obligation, or we, our executives or vicarious agents are reproached for intentional or grossly negligent breach of duty or a case of injury to life, limb or health exists.

**11.5:** Our liability, except in the case of utilisation of a guarantee, assumption of a procurement risk, fraudulent intent, intent, and injury to life, limb or health and other differing liability amounts prescribed by law, shall be limited in total to a maximum amount of liability of EUR 100,000.00 for each claim. Any further liability shall be excluded.

**11.6:** Exclusion resp. limitation of liability according to 11.2 to 11.5 above and 11.7 shall apply to the same extent for the benefit of executive and non-executive employees and other vicarious agents as well as our sub-contractors.

**11.7:** Claims by the customer for damages from this contractual relationship may only be asserted within a preclusion period of one year as of commencement of the statutory limitation period. This shall not apply if we are responsible for fraudulent intent, intent or gross negligence, and shall not apply to claims for injury to life, limb or health, and in the event of a claim arising from tort.

**11.8:** There is no connection between the reversal of the burden of proof and the foregoing stipulations.

#### 12. Place of performance / Legal venue / Applicable law

**12.1:** Place of performance for all contractual obligations is our company's registered office except where an obligation to be performed at a creditor's place of business is assumed. Any disputes arising hereunder shall – as far as admissible by law – be settled exclusively before the court of law competent for the location of our registered office. We shall also have the right, however, to bring an action against the customer at its general legal venue.

**12.2:** The law of the Federal Republic of Germany shall apply exclusively to all legal relationships between the customer and ourselves, in particular to the exclusion of the UN Sales Convention (CSIG).

#### 13. Property rights

**13.1:** Unless otherwise agreed, we shall be obliged only to deliver goods in the Federal Republic of Germany that are exempt from third-party industrial property rights and copyrights. If a third party raises justified claims on account of infringement of property rights by products delivered by us to a customer, we shall be liable to the customer within the time limit specified in 8.7. as follows:

- We shall first at our option try to obtain a right of use at our expense for the deliveries in question or change the products so that the property right is not infringed, or exchange the products. If we cannot do so on reasonable conditions, the customer shall be entitled to its legal rights in line with these General Terms and Conditions of Contracts and Delivery.
- The customer shall only be entitled to rights if it gives us written notification immediately about the claims asserted by a third party, does not admit any infringement, and all defensive measures and settlement negotiations to avert the claims are left to us. If the customer stops using the products for reasons of loss minimisation or other good cause, the customer shall be obliged to advise the third party that cessation of use is not deemed to be an acknowledgement of a property right infringement. If an appeal is filed by third parties against the customer resulting from the use of products we supply for infringement of property rights, the customer undertakes to notify us immediately in writing and give us the opportunity to participate in any legal dispute. The customer must support us in every way in conducting such a legal dispute. The customer must not take any action which could impair our legal position.

**13.2:** The customer shall have no claims if it is responsible for infringement of a property right. The customer shall also have no claims if the infringement of the property right is due to the customer's special instructions, an application which we could not foresee or the fact that the products were changed by the customer or used with products we did not supply.

#### 14. Institution of insolvency proceedings / Incoterms / Severability clause

**14.1:** A petition to institute insolvency proceedings filed by the customer or the customer's suspension of payments which is not due to rights of retention or other rights shall entitle us to rescind the contract at any time or make delivery of the goods or our service dependent on the prior fulfilment of the payment obligation. If the goods were already delivered or our service provided, the consideration shall be due immediately in such cases. We are also entitled to reclaim the goods in the above-mentioned cases and to retain them until the purchase price is paid in full.

**14.2:** If trade terms are agreed according to the International Commercial Terms (INCOTERMS), INCOTERMS 2000 shall apply.

**14.3:** If any provision of this contract is or shall become invalid/void or unenforceable in whole or in part for reasons of the law of general terms and conditions according to §§ 305 to 310 BGB, statutory regulations shall apply.

If any current or future provision of the contract is or shall become invalid/void or unenforceable in whole or in part for reasons other than the provisions relating to the law of general terms and conditions according to §§ 305 to 310 BGB, this shall not affect the validity of the remaining provisions of this contract unless the performance of the contract – also in consideration of the following provisions – would present an unreasonable hardship for either party. This shall also apply if, after the contract is concluded, it is found to have a gap that requires filling.

Contrary to the principle of the judicial decisions of the Federal High Court of Justice, according to which a severability clause in principle only reverses the burden of proof, the validity of the remaining provisions of the contract shall be maintained in all circumstances, and § 139 BGB therefore waived as a whole.

The parties shall replace any invalid/void/unenforceable provision or gap that requires filling for reasons other than the provisions relating to the law of general terms and conditions according to §§ 305 to 310 BGB by a valid provision that takes account of the legal and economic content of the invalid/void/unenforceable provision and the content of the contract as a whole. § 139 BGB (partial nullity) is expressly excluded. If the invalidity of any provision is due to a measure of performance or time (time limit or date) stated therein, a measure which most closely corresponds to the original measure in a legally admissible way must be agreed for this provision.

#### Note:

In accordance with the provisions of the "Bundesdatenschutzgesetz" [Federal Data Protection Act], we draw attention to the fact that our accounting is maintained on EDP equipment, and that we also in this respect store data received as a result of the business relationship with the customer.

Bochum, January 2012