

# **General Terms and Conditions of Sale and Delivery of Banovex GmbH & Co. KG**

## **§ 1 Validity**

- (1) These terms and conditions shall apply exclusively to entrepreneurs within the meaning of § 14 of the German Civil Code (BGB), i.e. natural or legal persons or partnerships with legal capacity who, when concluding the contract, are acting in the exercise of their commercial or independent professional activity. For this purpose, we may collect additional information from our customers (e.g. VAT ID, trade licence) or obtain company information.
- (2) Our deliveries, services and offers are made exclusively on the basis of these General Terms and Conditions. They are an integral part of all contracts that we conclude with our customers and contractual partners (hereinafter referred to as "Customer") for the services offered by us.
- (3) Deviating terms and conditions of the Customer or third parties shall not apply unless and insofar as we expressly accept them in writing. In particular, our silence with regard to such deviating terms and conditions shall not be deemed to be an acknowledgement or consent, even in the case of future contracts. Even if we refer to a letter containing or referring to the terms and conditions of the customer or a third party, this shall not constitute an agreement to the validity of those terms and conditions. The exclusion of the customer's general terms and conditions shall also apply if these do not contain a separate provision on individual points of regulation.
- (4) These Terms and Conditions in their current version shall also apply as a framework agreement for future contracts without our having to include them again in each individual case.
- (5) The contract languages are German and English. In the event of any discrepancies between the German and English versions of the offers or these General Terms and Conditions, the German version shall take precedence.

## **§ 2 Offer and conclusion of contract**

- (1) The offers issued by us are subject to change and non-binding unless they are expressly marked as binding.
- (2) If the customer wishes to place an order by telephone, in writing or in text form, we will send him our offer. Our offers are subject to change. If the customer orders on the basis of this offer, we are entitled, but not obliged, to accept it within 2 weeks. In this case, the contract shall be concluded by order confirmation.
- (3) If the customer orders electronically, we will confirm receipt of the order without delay.
- (4) The text of the contract will be saved by us after conclusion of the contract. The General Terms and Conditions are accessible to the customer at any time at <https://www.banovex.com/downloads/agb/avb-e.pdf> and can be saved and printed out by the customer. With the order confirmation, the customer will also receive the text of the contract as well as these General Terms and Conditions in text form. Furthermore, we will provide the customer with the contractual provisions including these General Terms and

Conditions in text form with the confirmation of receipt, at the latest, however, with the order confirmation.

- (5) Information and explanations regarding products and services by us and our employees are provided exclusively on the basis of previous experience. They do not represent any properties or guarantees with regard to the products. This applies equally to references to technical product descriptions, material characteristics, DIN regulations, sales brochures or similar. In no case shall a property be deemed to be guaranteed which is only determined after mixing or combining with other substances or objects. A guarantee shall only be deemed to have been assumed by us if we have designated a property and/or a performance outcome as "legally guaranteed" in writing.
- (6) Technical changes as well as changes in form, colour and/or remain reserved within the scope of what is reasonable. The purchaser is aware that quantity deviations of +/- 10 % may arise due to the nature of production.
- (7) The examination of the suitability of the delivered or processed goods for the customer's own operational use or further processing purpose as well as the selection of quality shall be the sole responsibility of the customer. This applies in particular to compliance with statutory and official regulations when using our products.
- (8) If the addition of a chemical analysis or technical-physical data of a material test is contractually required, we shall only vouch for their reliability according to the examination possibilities of an external, independent laboratory. The costs incurred for this shall be borne by the customer depending on the expenditure and prior agreement.
- (9) We reserve the ownership and/or copyright of all offers submitted as well as the drawings, illustrations, calculations, catalogues and other documents and aids displayed. The customer may not make these items accessible to third parties as such or in terms of content, disclose them, use them himself or through third parties or reproduce them without our express consent. He must return these items to us in full and destroy any copies made if they are no longer required by him in the ordinary course of business or if negotiations do not lead to the conclusion of a contract.
- (10) We reserve the right to offer previews. These shall neither become part of the service nor shall there be a claim to their inclusion in the product range. The properties of previews shall only become part of the contract if this has been expressly agreed in writing.

### **§ 3 Prices and payment**

- (1) The prices advertised by us at the time of conclusion of the contract shall apply; these shall be understood as total prices including costs for transport/freight, any export and import fees, but plus the statutory value added tax. Transport insurance is obligatory; we shall bear the costs of the insurance. If, by way of exception, we bear the freight costs in accordance with the contract, the customer shall bear the additional costs resulting from increases in freight rates after conclusion of the contract.
- (2) Payment shall generally be made in advance, on account or via instant bank transfer. Other payment methods require a separate agreement between us and the customer.
- (3) Invoicing shall in principle be carried out in euros. If costs are incurred in other currencies, the customer shall in principle bear the risk of an increase in the costs due to a deterioration in the

exchange rate between the time of calculation and the actual payment of costs which are invoiced by third parties in foreign currency as agreed. In the case of transfers from abroad, the customer shall always bear the bank charges incurred.

- (4) We are entitled to send the invoice to the customer as an electronic invoice pursuant to § 14 para. 1, sentence 7, 8 UStG as an e-mail. It is pointed out to the customer that sending a digital invoice to him entails archiving obligations.
- (5) Invoice amounts are due immediately and payable within 30 days without any deduction, unless otherwise agreed in writing. The date of receipt by us shall be decisive for the date of payment. If the customer fails to make payment when due, interest shall be charged on the outstanding amounts from the due date at the statutory default interest rate; the right to claim higher interest and further damages in the event of default shall remain unaffected. Furthermore, we shall be entitled to a flat-rate default fee of 40.00 euros.
- (6) We are entitled to demand advance payment. The amount results from the contractual agreement. We are entitled to commence performance only after the advance payment in the agreed amount has been made by the customer. Insofar as there are still further claims against the customer, we also reserve the right to begin our own performance only after receipt of all outstanding payments. We reserve the right to declare withdrawal from the contract if the customer fails to make payment despite a reminder. We are entitled to demand a copy of the bank transfer from the customer.
- (7) The contractual partner is only authorised to exercise a right of retention insofar as its counterclaim is based on the same contractual relationship.
- (8) If the customer is in default with an amount of at least 10% of the outstanding total claim, it shall be deemed agreed: All claims by us shall become due immediately. We are entitled to make the further processing of all orders of the customer dependent on an advance payment or provision of security or to refuse their further fulfilment after setting a reasonable grace period. If, after conclusion of the contract, it becomes apparent that our claim to the purchase price is jeopardised by the customer's lack of ability to pay, we shall be entitled to refuse performance in accordance with the statutory provisions and - if necessary after setting a deadline - to withdraw from the contract.
- (9) We shall furthermore adjust the prices to be paid on the basis of this contract at our reasonable discretion to the development of the costs that are decisive for the price calculation. The costs relevant for the price calculation (hereinafter referred to as "total costs") consist of costs for electricity, personnel and service providers, overheads (e.g. rent, interest), costs for IT systems and communication networks, petrol costs (in particular diesel surcharge), energy costs (in particular energy surcharges), forwarding costs. A price increase is considered and a price adjustment is to be made if the total costs increase or decrease. Increases in one type of cost, e.g. personnel costs, may only be used for a price increase to the extent that they are not compensated by possible decreases in other areas, e.g. overheads. In the event of cost reductions, we shall reduce the prices to the extent that these cost reductions are not fully or partially offset by increases in other areas (i.e. other types of costs). When exercising our reasonable discretion, we shall choose the respective points in time of a price change in such a way that cost reductions are not calculated according to standards that are less favourable for the customer than cost increases, i.e. cost reductions shall have at least the same effect on prices as cost increases. We shall notify the customer in writing of any changes in prices at least

two weeks before they are to take effect. This also applies to orders that have already been confirmed with an order confirmation. In the event of a price increase, the customer shall be entitled to terminate the contract in text form without observing a notice period at the time the price adjustment takes effect. We shall specifically draw the customer's attention to this in the notice of change. Otherwise, § 315 BGB remains unaffected.

- (10) Irrespective of paragraph 9, we shall be entitled in the event of an increase in the statutory value added tax and obliged in the event of a reduction to adjust the prices accordingly at the time of the respective change. In the event of this price adjustment, the customer shall have no right of termination.

#### **§ 4 Delivery and delivery time**

- (1) Delivery shall be made within the delivery period specified for the respective product. Should we fail to meet an agreed delivery date, the customer shall set us a reasonable period of grace, which shall in no case be less than two weeks - unless unreasonable.
- (2) Deliveries and transactions pursuant to § 376 HGB (German Commercial Code) (transactions for delivery by a fixed date) require our express prior confirmation, which must be made at least in text form. Any additional delivery costs arising from this shall be borne by the customer.
- (3) All delivery periods stated or otherwise agreed by us when the order is placed shall commence,
- a) if delivery against prepayment or immediate bank transfer is agreed, on the day of receipt of the full purchase price (including VAT and shipping costs) or
  - b) if payment by invoice has been agreed, on receipt of our order confirmation by the customer or, in the absence of such, within 5 calendar days of receipt of the order by us, but not before all details of the execution of the order have been clarified and all other preconditions to be fulfilled by the customer have been met, in particular agreed advance payments or securities and necessary cooperation (obtaining official permits, provision of documents relating to customs, financing, tax, etc.) have been provided in full. If the customer has requested changes after placing the order, the delivery and/or performance period shall begin with our confirmation of the change.
- (4) The date of handover of the goods by us to the shipping company alone shall be decisive for compliance with the shipping date.
- (5) We are entitled to make partial deliveries if
- the partial delivery is usable and reasonable for the customer within the scope of the contractual intended purpose and
  - the customer does not incur any significant additional expense or costs as a result (unless we agree to bear these costs).

Packaging and transport costs are only charged once in this case.

- (6) We are only obliged to perform from our own stock of goods (stock debt). However, we are entitled to sell these goods at any time if
- a) there is a reference in the offer to the limited availability of the goods or

- b) the delivery is made against advance payment and the payment is not received by us within a period of five working days after acceptance of the offer.
- c) the customer is in default of acceptance of the goods.

In these cases, dispatch within the agreed period or the period specified by us shall only take place while stocks last.

- (7) The assumption of a procurement risk or a procurement guarantee does not lie solely in our obligation to deliver an item determined only by its type. We shall only assume a procurement risk within the meaning of § 276 BGB by virtue of a separate written agreement using the phrase "we assume the procurement risk ...".
- (8) If the customer is in default of acceptance, fails to cooperate as agreed or if delivery is delayed for other reasons for which the customer is solely responsible, we shall first issue a warning to the customer setting a reasonable deadline. After expiry of the deadline, we shall be entitled to sell off articles requiring refrigeration in accordance with paragraph 7. In addition, we are entitled, at our discretion, to withdraw from the contract or to demand immediate payment of the remuneration as well as compensation for the damage caused by the delay, including additional expenses (e.g. storage costs). With regard to the aforementioned damages, we shall charge a lump-sum contractual penalty of 0.1% of the net sales price per calendar day (however, a maximum of 5% in total), starting with the delivery deadline or - in the absence of a delivery deadline - with the notification that the goods are ready for dispatch. The proof of higher damages as well as the assertion of other statutory claims shall remain unaffected; the lump sum shall be set off against further monetary claims. The customer shall be entitled to prove that we have incurred no damage at all or only significantly less damage than the aforementioned lump sum. A reversal of the burden of proof is not associated with the above provisions.

## **§ 5 Shipment, transfer of risk**

- (1) Unless expressly agreed otherwise, we shall determine the appropriate mode of dispatch and the transport company at our reasonable discretion.
- (2) The risk of accidental loss or accidental deterioration shall pass to the customer in the case of an agreed debt to be discharged upon handover of the product to be delivered to the customer, in the case of an agreed debt to be discharged upon handover of the product to be delivered to the forwarder, the carrier or the undertakings otherwise designated to carry out the shipment, but no later than upon leaving our works or our warehouse or our branch or the manufacturer's works, unless a debt to be discharged upon delivery has been agreed. The foregoing shall also apply if an agreed partial delivery is made. If the shipment is delayed due to our exercising our right of retention as a result of the customer's default in payment in whole or in part, or for any other reason for which the customer is responsible, the risk shall pass to the customer at the latest from the date of receipt of the notification of readiness for shipment and/or performance vis-à-vis the customer.
- (3) If delivery is impossible due to a circumstance for which the customer is responsible, or if the customer is in default of acceptance, the customer shall bear the costs of a further delivery.

## § 6 Retention of title

- (1) The items of the deliveries (goods subject to retention of title) shall remain our property until all claims against the customer arising from the business relationship have been settled, including all claims arising in the future from contracts concluded at a later date. This shall also apply to a balance in our favour if individual or all claims are included by us in a current account (current account) and the balance is drawn.
- (2) The customer shall insure the reserved goods sufficiently, in particular against fire and theft. Claims against the insurance company arising from a case of damage affecting the goods subject to retention of title are hereby already assigned to us in the amount of the value of the goods subject to retention of title. We accept the assignment already now.
- (3) If the value of all security interests to which we are entitled exceeds the amount of all secured claims by more than 10%, we shall release a corresponding part of the security interests at the customer's request. It shall be presumed that the conditions of the preceding sentence are fulfilled if the estimated value of the securities to which we are entitled reaches or exceeds 150% of the value of the secured claims. We shall be entitled to choose between different security interests for the release.
- (4) During the existence of the reservation of title, the customer is prohibited from pledging or transferring ownership by way of security and resale is only permitted to resellers in the ordinary course of business and only on condition that the reseller receives payment from its contractual partner or makes the reservation that ownership is not transferred to the customer until the latter has fulfilled its payment obligations. The right to resell the goods subject to retention of title shall lapse if the customer suspends payment or defaults on payment to us.
- (5) If the customer resells goods subject to retention of title, he hereby assigns to us by way of security his future claims from the resale against his contractual partners with all ancillary rights - including any balance claims - without the need for further special declarations (extended retention of title). If the reserved goods are resold together with other items without an individual price having been agreed for the reserved goods, the customer shall assign to us that part of the total price claim which corresponds to the price of the reserved goods invoiced by us. The part of the claim assigned to us shall be satisfied with priority. The customer may not make any agreement with its customers that excludes or impairs our rights in any way or nullifies the advance assignment of the claim.
- (6) Until revoked, the customer is authorised to collect assigned claims from the resale. The customer shall immediately forward to us the payments made up to the amount of the secured claim. In the event of good cause, in particular default of payment, cessation of payments, opening of insolvency proceedings, protest of a bill of exchange or justified indications of overindebtedness or imminent insolvency of the customer, we shall be entitled to revoke the customer's direct debit authorisation. In addition, we may, after prior warning and observance of a reasonable period of time, disclose the assignment by way of security, realise the assigned claims and demand the disclosure of the assignment by way of security by the customer to its contractual partners. At our request, the customer shall be obliged to provide us with all information and documents required for the collection of assigned claims.

- (7) If the customer includes claims from the resale of goods subject to retention of title in the current account relationship existing with his customers, he shall already now assign to us a final balance resulting in his favour in the amount corresponding to the total amount of the claim from the resale of our goods subject to retention of title included in the current account relationship.
- (8) If the customer has already assigned claims from the resale of the products delivered or to be delivered by us to third parties, in particular on the basis of genuine or non-genuine factoring, or has entered into other agreements on the basis of which our current or future security rights may be impaired in accordance with the above provisions, the customer must notify us of this immediately. In the event of non-genuine factoring, we shall be entitled to withdraw from the contract and to demand the return of products already delivered. The same applies in the case of genuine factoring if the customer cannot freely dispose of the purchase price of the claim according to the contract with the factor.
- (9) Processing/Compounding/Mixing
- a) The customer is permitted to process the reserved goods or to mix or combine them with other objects. The processing shall be carried out for us. The new item shall be deemed to be reserved goods. However, if the value of the reserved goods is less than the value of the goods not belonging to us and/or the processing, we shall acquire co-ownership of the new goods in the ratio of the value (gross invoice value) of the processed delivery item to the value of the other processed goods and/or the processing at the time of processing. Insofar as we do not acquire ownership of the new goods in accordance with the above, the parties agree that the customer shall grant our co-ownership of the new goods in the ratio of the value (gross invoice value) of the delivery item belonging to us to that of the other processed goods at the time of processing. The above sentence shall apply accordingly in the event of inseparable mixing or combination of the delivery item with goods not belonging to us. The customer shall keep the resulting new item for us with the due care of a prudent businessman.
  - b) The provision on the assignment of claims according to para. 5 shall also apply to the new item. However, the assignment shall only apply up to the amount corresponding to the value of the processed combined or mixed reserved goods invoiced by us, plus 10 % thereof.
  - c) If the customer combines the goods subject to retention of title with real estate or movable property, he shall, without the need for any further special declarations, also assign to us by way of security his claim to which he is entitled as remuneration for the combination, together with all ancillary rights, in the amount of the ratio of the value of the combined goods subject to retention of title to the other combined goods at the time of the combination.
  - d) The customer will not assert the non-assigned parts of the claim to our disadvantage.
- (10) If the customer is domiciled in Switzerland and the goods are intended for its business in Switzerland, the customer undertakes to cooperate in the registration of a reservation of title pursuant to Art. 715 f. ZGB. The registration must take place as soon as possible, but at the latest within 2 months after receipt of the order confirmation, in the absence of such after receipt of

the order confirmation. The registration shall be applied for by us. The costs of such registration shall be borne by the customer.

- (11) In all other respects, insofar as the goods are intended for the customer's business in a country other than Germany, the customer shall,
- a) to mark the goods subject to retention of title as such (e.g. by attaching a label "subject to retention of title by Bahadir Innovation Thermoplast GmbH & Co. KG"),
  - b) to bear the costs of any creditworthiness information obtained by us in advance.
  - c) to cooperate in any other measures we take to protect our property right or any other right in the goods.
- (12) In the event of seizures, confiscations, filing of an application for the opening of insolvency proceedings or other dispositions or interventions by third parties, the customer shall notify us immediately. The customer shall be liable for all costs incurred for the reversal of such seizures, in particular by filing a third-party action, insofar as reimbursement of the costs cannot be obtained from the third party concerned. If a justified interest is substantiated, the customer shall immediately provide us with the information required to assert its rights against the contractual partner and hand over the necessary documents.
- (13) In the event of culpable breaches of duty by the customer in breach of contract, in particular in the event of default in payment, we shall be entitled to withdraw from the contract in addition to taking back the goods following the unsuccessful expiry of a reasonable deadline set for the customer to perform; the statutory provisions on the dispensability of setting a deadline shall remain unaffected. The customer shall be obliged to surrender the goods subject to retention of title and shall bear the transport costs required for taking them back. The taking back or the assertion of the reservation of title or the seizure of the reserved goods by us shall not constitute a withdrawal from the contract unless we have expressly declared this. In the event of withdrawal from the contract, we shall be entitled to realise the reserved goods. The proceeds of realisation, less reasonable costs of realisation, shall be set off against those claims which the customer owes us from the business relationship.

## **§ 7 Acceptance for individual solutions**

- (1) If we have fully performed any contractually agreed work services, we shall make these available to the customer for inspection and acceptance on the agreed date. The customer is obliged to accept the work provided that it complies with the contractual agreements.
- (2) Acceptance by the customer shall take place at our premises unless otherwise agreed.
- (3) We shall be entitled at any time to submit parts of the performance to the customer for early partial acceptance, which the customer shall grant if the part is accessible for assessment in this form. Once parts have been accepted, they can no longer be rejected by the customer at a later date or their modification can be demanded, unless there are circumstances which the customer could not yet have recognised at the time of the partial acceptance.
- (4) If the customer does not declare acceptance immediately after completion of the work, we may set him a deadline of two weeks in writing for the submission of this declaration. Acceptance shall be deemed to have taken place if the customer does not specify the reasons for refusing

acceptance in writing within this period. Within the scope of the notification of completion, we shall point out to the customer that the acceptance is deemed to have taken place after the expiry of the deadline.

- (5) Furthermore, the work shall be deemed to have been accepted if the handover has taken place at the customer's premises and the customer has used the work without complaint (so-called acceptance fiction), in particular if the customer uses, processes, mixes or resells the product.
- (6) If the customer wishes to make changes after acceptance of the services, he must inform us of the desired changes in writing. Such changes shall always be made at the expense of the customer.
- (7) The customer is obliged to collect the object of the order within 1 week of receipt of the notification of completion.

## **§ 8 Höhere Gewalt**

- (1) We shall not be liable for impossibility of delivery or for delays in delivery insofar as these are caused by
  - a) force majeure (e.g. civil unrest, acts of terrorism, natural disasters, acts of war, energy and raw material shortages, power failures, accidents, pandemics) as well as equivalent operational hindrances through no fault of our own (e.g. strikes/lockouts, accidents, difficulties in obtaining any necessary official permits, transport bottlenecks or obstacles, machine damage, damage caused by fire/water),
  - b) not having been supplied, not having been supplied on time or having been supplied incorrectly despite proper and sufficient coverage prior to the conclusion of the contract with the customer in accordance with the quantity and the quality from our delivery or service agreement with the customer (congruent coverage) have been caused,
  - c) virus and other, also non-technical attacks by third parties occur on our system, although we have taken the appropriate protective measures in accordance with the state of the art, and
  - d) obstacles have been caused due to German, US or other applicable national, EU or international regulations of foreign trade law or due to other circumstances,
  - e) official orders become impossible (this includes, in particular, orders in accordance with the IfSG, orders prohibiting the commercial staging of the event, orders regarding closing times, other orders that make it legally or actually impossible to hold the event or that make it unreasonable to expect us to hold the event) for which we are not responsible.
- (2) In the event of non-availability of the ordered goods for which we are not responsible as a result of the aforementioned events pursuant to para. 1, the customer shall be informed immediately of the lack of delivery possibility. If such events make it impossible for us to deliver or perform and the impediment is not only of temporary duration, we shall be entitled to withdraw from the contract, unless we have assumed the procurement risk. In the event of hindrances of temporary duration, the delivery or service deadlines shall be extended or postponed by the period of the hindrance plus a reasonable start-up period.

- (3) If a delivery or performance date has been agreed as binding and if the agreed delivery or performance date is exceeded by more than 30 days due to events pursuant to para. 1 or if, in the case of a non-binding performance date, adherence to the contract is objectively unreasonable for the customer due to events pursuant to para. 1, the customer shall be entitled, after the fruitless expiry of a reasonable grace period, to withdraw from the contract due to the part not yet performed. In the event of withdrawal by the customer and/or by us, the performance already rendered shall be reimbursed without delay.
- (4) If we are in default with a delivery or service or if a delivery or service becomes impossible, for whatever reason, our liability shall be limited to damages in accordance with § 10 of these General Terms and Conditions.

### **§ 9 Defect rights**

- (1) In the event of a material defect in the purchased item, the statutory provisions shall generally apply unless otherwise agreed below.
- (2) The customer shall carefully inspect the goods immediately after delivery. The delivered goods shall be deemed to have been approved by the customer if a defect is
  - (i) in the case of obvious defects, not within five working days after delivery or
  - (ii) in the case of hidden defects, notified immediately upon discovery of the defect.

Hidden defects must be notified to us within the statutory warranty limitation period at the latest. Failure to give notice of defect in due time shall exclude any claim of the customer for breach of duty due to material defect. This shall not apply in the event of intentional, grossly negligent or fraudulent action on our part, in the event of injury to life, limb or health or the assumption of a guarantee of freedom from defects, or of a procurement risk in accordance with § 276 of the German Civil Code (BGB) or other legally mandatory liability facts.

- (3) We do not assume any warranty according to §§ 478, 479 BGB (recourse in the supply chain - supplier recourse) if the customer has processed or otherwise altered the products delivered by us under the contract, insofar as this does not correspond to the contractually agreed intended purpose of the products. Furthermore, we do not assume any warranty according to §§ 478, 479 BGB (German Civil Code) insofar as the customer has entered into agreements with his buyer which go beyond the legally mandatory claims for defects.
- (4) We further do not assume any warranty for the material delivered by the customer.
- (5) If a product was manufactured entirely or partly from reclaimed material (product obtained by chemical processing of used materials), we would like to point out that reclaimed materials have different compositions and are therefore subject to high qualitative and optical fluctuations, which is why they often contain impurities or foreign materials. Paragraph 4 therefore applies accordingly to regrind.
- (6) We shall bear the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs (not: removal and installation costs), if there is actually a defect. Otherwise, we may demand reimbursement from the customer of the costs incurred as a result of the unjustified request for rectification of the

defect (in particular inspection and transport costs), unless the lack of defectiveness was not recognisable to the customer. Furthermore, claims by the customer for expenses incurred for the purpose of subsequent performance, in particular transport, travel, labour and material costs, are excluded insofar as the expenses increase because the object of the delivery was subsequently taken to a location other than the customer's branch office, unless the transfer was in accordance with its intended use.

- (7) The special provisions of § 10 of these General Terms and Conditions shall also apply to the customer's claims for damages.

## **§ 10 Liability**

### **10.1 General**

- (1) The following exclusions and limitations of liability shall apply to any liability on our part for damages, without prejudice to the other statutory prerequisites for claims.
- (2) We shall be liable for damages without limitation insofar as
  - a) these are due to gross negligence or intent,
  - b) we have assumed a guarantee for the quality of the goods,
  - c) these are to be replaced in accordance with the Product Liability Act,
  - d) such damage is to life, limb or health; or
  - e) these are based on a culpable breach of essential contractual obligations.
- (3) The liability for simple and gross negligence as well as for the violation of essential contractual obligations is furthermore limited to the foreseeable and contract-typical damage, the occurrence of which the customer had to expect at the time of the conclusion of the contract on the basis of the circumstances known to him at that time and insofar as no other of the exceptional cases listed in para. 2 lit. b) to d) exists at the same time.
- (4) In all other respects, liability for damages of any kind, regardless of the basis of the claim, including liability for culpa in contrahendo, is excluded.
- (5) The strict liability on our part pursuant to § 536a para. 1, 1st Alt. BGB for defects already existing at the time of conclusion of the contract is excluded. We shall not be liable for any lack of economic success on the part of the customer.
- (6) The above exclusions and limitations of liability shall also apply in favour of the employees, vicarious agents and other third parties whose services we use for the performance of the contract.
- (7) The above provisions shall apply to all claims for damages (in particular for damages in addition to performance and damages in lieu of performance), irrespective of the legal grounds, in particular due to defects, the breach of duties arising from the contractual obligation or from tort. They also apply to the claim for compensation for futile expenses.
- (8) A change in the burden of proof to the detriment of the customer is not associated with the above provisions.

## **10.2 Liability due to delay**

If the customer incurs damage due to a delay for which we are responsible, he shall be entitled to claim compensation for the delay (including reimbursement of futile expenses) to the exclusion of any further claims. This shall amount to 0.5% of the net remuneration for the delayed delivery of goods and/or performance of services as a whole for each week of delay or part thereof, but not more than 3.5% of the net remuneration for the total delivery and/or performance which is not delivered and/or performed by us on time or in accordance with the contract as a result of the delay. Any further compensation for the damage caused by the delay is excluded. This shall not apply in the event of intentional, grossly negligent or fraudulent action on our part, in the event of claims for injury to life, limb or health, in the event of an agreed fixed delivery date in the legal sense and the assumption of a performance guarantee or a procurement risk in accordance with § 276 of the German Civil Code (BGB) and in the event of mandatory liability under the law.

## **10.3 Liability due to impossibility**

We shall be liable in the event of impossibility of performance in cases of intent or gross negligence on our part or on the part of a representative or vicarious agent as well as in the event of culpably caused injury to life, limb or health in accordance with the statutory provisions. However, in cases of gross negligence, our liability in the event of impossibility of performance shall be limited to the foreseeable damage typical for the contract, unless another of the exceptional cases listed in sentence 1 applies at the same time. Outside the cases of S. 1 and S. 2, our liability for damages due to impossibility and for reimbursement of futile expenses shall be limited to a total of 10% of the value of the performance that has become impossible. Further claims of the customer due to impossibility of delivery are excluded - even after expiry of any deadline set for us to perform. The customer's right to withdraw from the contract remains unaffected. A change in the burden of proof to the detriment of the customer is not associated with the above provisions.

## **§ 11 Cancellation of contracts for work and services**

- (1) If orders are cancelled by the customer for reasons for which we are not responsible, we shall be entitled to demand the agreed remuneration, taking into account what the customer saves in expenses as a result of the cancellation of the contract or what we could have acquired or have acquired by using our labour elsewhere. It is therefore presumed that we are entitled to the remuneration for the part performed as well as at least the following lump sums on the part of the work performance not yet performed:
  - a) In the event of termination up to 2 weeks before the agreed delivery date, 50% on the part of the performance not yet rendered.
  - b) In the event of termination less than 2 weeks before the agreed delivery date, 95 % on the part of the performance not yet rendered.
- (2) Paragraph 1 shall not apply, however, if the customer has been granted a right of termination free of charge by us in an individual case and we receive the customer's declaration on the exercise of this right of termination free of charge in due time.
- (3) The customer expressly reserves the right to prove to us that the expenses saved are significantly higher than the deductions taken into account above or that the services have been used

elsewhere. In the event of such proof, the customer is only obliged to pay the correspondingly lower amount.

- (4) Insofar as we prove that the costs attributable to the non-performed part, which have already been performed due to and with regard to the implementation of the order, are higher than the flat rates asserted in para. 1 or that the saved expenses are lower than the imputed savings, we shall be entitled to demand the actual costs incurred.

## **§ 12 Shortening the limitation periods**

- (1) The limitation period for claims and rights due to defects in the services, irrespective of the legal grounds, is one year. However, this does not apply in cases of §§ 438 para. 1 no. 1 BGB (defects of title in immovable property), § 479 para. 1 BGB (contractor's right of recourse) or § 634a para. 1 no. 2 BGB (buildings or work the success of which consists in the provision of planning or supervision services for them). The cases excluded in the preceding sentence 2 are subject to a limitation period of three years.
- (2) The limitation periods under subsection (1) shall, however, apply subject to the following proviso:
  - a) The limitation periods shall generally not apply in the event of intent or fraudulent concealment of a defect or insofar as we have assumed a guarantee for the quality of the subject matter of the contract.
  - b) The limitation periods shall not apply to claims for damages based on a grossly negligent breach of duty or on a culpable breach of material contractual obligations - not consisting in the delivery of a defective item or the provision of a defective work performance - as well as in cases of culpably caused injury to life, limb or health or in the case of claims under the Product Liability Act. The limitation periods for claims for damages shall also apply to the reimbursement of futile expenses.
- (3) The limitation period for all work performance claims begins with acceptance.
- (4) Unless expressly stipulated otherwise, the statutory provisions on the commencement of the limitation period, suspension of the running of the limitation period, suspension and recommencement of time limits shall remain unaffected.
- (5) The above provisions shall apply mutatis mutandis to claims for damages that are not related to a defect; para. 1 sentence 1 shall apply to the limitation period.
- (6) A change in the burden of proof to the detriment of the customer is not associated with the above provisions.

## **§ 13 Applicable law and place of jurisdiction**

- (1) These Terms and Conditions and the entire legal relationship between us and our customers shall be governed by the law of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods (CISG), subject to any other individual agreements. If foreign law is mandatory in individual cases, these GTC shall be interpreted in such a way that the economic purpose pursued with them is safeguarded as far as possible.

- (2) The place of performance for all contractual obligations, with the exception of the case of the assumption of a debt to be discharged at creditor's domicile or otherwise agreed, shall be our place of business in Kempten.
- (3) If the customer is a merchant, a legal entity under public law or a special fund under public law or has no general place of jurisdiction in the Federal Republic of Germany, the place of jurisdiction for any disputes arising from the business relationship shall be our registered office.
- (4) For the sake of clarity, the jurisdiction provisions of the above paragraphs 2 and 3 shall also apply to such facts between us and the customer which may lead to non-contractual claims within the meaning of Regulation (EC) No. 864/2007. Mandatory statutory provisions on exclusive places of jurisdiction shall remain unaffected by this provision.

#### **§ 14 Changes to the terms of the contract**

Unless otherwise specifically regulated, we are entitled to unilaterally amend these contractual terms and conditions insofar as this is necessary to adapt to changes in the statutory, legal or technical framework conditions. We shall notify the customer of the amendments or supplements in text form at least six weeks before they take effect. If the customer does not agree with the amendments or additions to the contractual terms and conditions, he may object to the amendments with a notice period of two weeks until the date on which the amendments or additions are intended to take effect. The objection must be in text form. If the customer does not object, the amendments or additions to the contractual terms and conditions shall be deemed to have been approved by him. When notifying the customer of the amendments or additions to the contractual terms and conditions, we shall specifically draw the customer's attention to the intended significance of his conduct.