General Terms and Conditions of Order, Delivery and Service for
ELSPRO Elektrotechnik GmbH & Co. KG
in Business Transactions with Entrepreneurs
February 2021

1. Scope of application, general information

1.1 These General Terms and Conditions for Orders, Deliveries and Services (**GTC**) shall apply exclusively to entrepreneurs within the meaning of Section 14 German Civil Code (BGB), i.e. natural or legal entities who acquire the goods or services for commercial or professional use.

1.2 The following Terms and Conditions (GTC) shall apply exclusively to the business relationship with our customers, including the provision of information and advice. If our GTC are introduced into the business transaction with the customer, they shall also apply to all further business relations between the customer and us, unless otherwise expressly agreed.

Deviating general terms and conditions of the buyer and/or customer – hereinafter referred to as the "**customer(s)**" – shall only apply if and to the extent that we expressly acknowledge them; otherwise, they shall be rejected. In particular, our silence with regard to such deviating general terms and conditions shall not be deemed to be an acknowledgement thereof or consent thereto, even in the case of future contracts.

Our GTC shall apply in place of any general terms and conditions of business of the customer, in particular, the customer's terms and conditions of purchase (**GTCP**), even if as per these GTCP the acceptance of the order is provided for as unconditional acceptance of the terms and conditions of purchase, or we deliver after the customer has pointed out the validity of his general terms and conditions of purchase, unless we have expressly waived the validity of our GTCP vis-a-vis the customer. The exclusion of the customer's general terms and conditions shall also apply if the general terms and conditions do not contain a separate provision on individual points of our General Terms and Conditions.

By accepting our order confirmation or the contractual service, the customer expressly acknowledges that it waives its legal objection derived from its terms and conditions of purchase that our GTC do not apply.

1.3 If framework agreements or other contracts have been concluded with our customers, these shall take precedence. In the absence of more specific provisions, they shall be supplemented by these GTC.

1.4 Insofar as the following refers to claims for damages, this also refers to claims for the reimbursement of expenses within the meaning of Section 284 German Civil Code (BGB).

2. Information / advice / properties of the products and services / cooperation by the customer

2.1 Information and explanations regarding our products and services by us or our sales agents are provided exclusively on the basis of our experience to date. They do not represent any property agreements or guarantees with regard to our products. The values stated here are to be regarded as average values of our products.

2.2 Product specifications *ultimately* agreed with the customer shall define the properties owed. Further properties of the delivery item or of our performance affected thereby – such as suitability for the intended use specified by the customer or usual properties of such products – are not owed.

2.3 All information about our products and services, in particular, such information contained in our offers and printed materials and on the Internet and the illustrations, drawings, dimensional, property or performance characteristics contained therein, as well as other information – in particular, technical information or information about ingredients – are to be regarded as approximate average values. Even data of our products not provided with tolerances, as contained in our Internet presentation or our catalogues and/or brochures, are subject to production-related deviations and changes customary in the trade and/or industry, in particular, due to further developments in production technology and the materials used.

2.4 Insofar as we provide instructions for use, these are written with the care customary within the industry, but do not release our customers from the obligation to carefully examine the products with regard to their suitability for the purpose desired by them. The same shall apply to information from us regarding import, customs and/or licensing regulations.
Unless otherwise agreed, the customer shall, in any case, be obligated to check the usability of our products and/or services for the purpose intended by him within the scope of his own responsibility.

2.5 We only assume an obligation to provide advice by virtue of an expressly agreed, separate consultancy agreement.

2.6 A reference to standards and similar regulations, as well as technical specifications, descriptions and illustrations of the delivery item in offers and brochures or on the Internet and in our advertising – including a description of properties provided – shall only constitute a legal statement of the properties of our products if we have expressly declared the quality to be a "*property of the product*"; otherwise, these are non-binding, general descriptions of performance. Unless otherwise agreed, this shall also apply to statements made by our employees.

2.7 A guarantee, irrespective of fault, shall only be deemed to have been assumed by us if we have expressly designated a property and/or a performance outcome as "*legally guaranteed*".

2.8 We do not assume any liability for the usability and/or registrability and/or marketability of our products or services for a purpose envisaged by the customer outside the scope of mandatory statutory liability, unless we have expressly agreed otherwise with the customer. The provision of Clause 11 shall remain unaffected.

2.9 As an essential duty to cooperate, the customer shall be obligated to provide us with all information and data required for the performance of the service in a timely and complete manner, and to perform all acts of cooperation from his sphere in a timely manner and free-of-charge, in order that we can perform our service in accordance with the contract.

3. Sample copies / documents and data provided / samples / cost estimates

3.1 The properties of samples or specimen copies shall only become part of the contract if this has been *expressly* agreed. The customer is *not* entitled to use or pass on samples.

If we sell to the customer on the basis of a sample or demonstration sample, any subsequent deviations in the delivered goods shall be permissible and shall not entitle the customer to assert any complaints or claims against us, unless expressly agreed otherwise, if they do not have any lasting effect on the normal use of the delivered goods and any agreed specifications are complied with by the delivered goods.

3.2 We reserve all property rights and copyrights to samples, illustrations, pictures, photos, drawings, data, cost estimates and other documents relating to our products and services that have been disclosed or provided to the customer. The customer undertakes not to make the samples, data, photos and/or documents referred to in the preceding sentence available to third-parties unless we provide our express consent. He shall return them to us without delay upon request, insofar as an order based on them is not placed with us. This shall apply if the right to retain the aforementioned objects and/or data is not otherwise contractually regulated in favour of the customer.

The provisions of sentences 1 and 2 shall apply analogously to documents, drawings or data of the customer; however, we may make these available to third-parties to whom we have permissibly transferred deliveries and/or services that are the subject matter of the contract with the customer, or to whom we make use of as vicarious agents or suppliers.

3.3 Our cost estimates shall only be binding if they are expressly designated as binding and the performance contained therein is commenced on a contractual basis immediately after receipt of the cost estimate by the customer.

4. Conclusion of contract / scope of delivery and services / software / procurement risk and warranty

4.1 Our offers are made without obligation unless they are expressly marked as “binding” or expressly contain binding commitments, or otherwise the binding nature has been expressly agreed with the customer. They are invitations to place an order by the customer and are not a binding offer on our part. In the event of a positive entry of the customer in official embargo directories or violations of relevant embargo provisions by the customer, we shall be entitled to terminate the initiation of contract without liability and to withdraw without liability from the part of the contract that has not yet been fulfilled.

By clicking the button “Place binding order” in our webshop, the customer places a binding order with us, including in accordance with these GTC.

The customer shall be bound to his order as a contractual application for 14 calendar days – in the case of electronic orders, for 5 working days (in each case at our registered office) – after receipt of the order by us, to the extent that the customer does not also have to anticipate a later acceptance by us (Section 147 German Civil Code [BGB]). This shall also apply to subsequent orders placed by the customer.

4.2 A contract shall only be concluded – including in current business transactions – when we confirm the customer’s order in writing or in text form (i.e. Including by fax or e-mail) by way of order confirmation.
The order confirmation shall only be valid under the condition that outstanding payment arrears of the customer are settled and that a credit check for the customer carried out by us – as well as a possible check regarding a negative export control entry in a relevant embargo list carried out by us – do not return any results that would preclude us from confirming the order.
In the event of delivery or performance within the binding period set for the customer, which is the subject of the offer, our order confirmation may be replaced by our delivery or performance, whereby the dispatch of the delivery or performance of the service shall be decisive.

4.3 In the case of call-off orders or acceptance delays caused by the customer, we shall be entitled to procure the material for the entire order and to manufacture the entire order quantity of agreed delivery items immediately or to cover the entire order quantity. Accordingly, any change requests of the customer cannot be taken into account after the order has been placed, unless this has been expressly agreed.

4.4 The customer must inform us in good time before conclusion of the contract in writing or in text form of any special requirements for our products. However, such notifications shall not extend our contractual obligations or scope of liability.

In the absence of any express agreement to the contrary, we shall only be obligated to deliver the ordered products as goods that can be marketed and approved in the Federal Republic of Germany.

4.5 *We shall only be obligated to perform from our own stock of goods*.

4.6 The assumption of a no-fault procurement risk equivalent to a guarantee within the meaning of Section 276 German Civil Code (BGB), or a procurement guarantee, shall not lie solely in our obligation to deliver an item that is only specified in terms of its type.

4.7 We shall only assume such a procurement risk within the meaning of Section 276 German Civil Code (BGB) by virtue of an express, separate agreement using the phrase “*we assume the procurement risk*...”.

4.8 If the acceptance of the products or their shipping – or the acceptance of our service performance – is delayed for a reason for which the customer is responsible, we shall be entitled (after the setting and subsequent expiry of a 14-day grace period, and at our discretion) to demand immediate payment of remuneration or to withdraw from the contract, or to refuse performance and to claim damages in place of the entire performance. The deadline must be set in writing or in text form. We do not have to refer to the rights arising from this clause again in this notice.

In the event of a claim for damages as set out above, the damages to be paid shall amount to 25% of the net delivery price in the case of purchase contracts, or 25% of the agreed net remuneration in the case of service contracts. The customer reserves the right to prove that the damage is significantly lower (more than 10% lower). A reversal of the burden of proof is not associated with the above provisions.

4.9 If shipping is delayed at the request of the customer (or for reasons for which the customer is responsible), we shall be entitled – beginning with the expiry of the reasonable period set in writing or in text form in the notification of readiness for shipping – to store the goods at the customer’s risk for loss and the deterioration of the goods and to invoice the costs incurred thereby at 0.5% of the net remuneration for the stored goods for each week (or part thereof). The stored goods shall only be insured at the special request of the customer. The assertion of further rights remains unaffected. The customer reserves the right to prove that a significantly lower (more than 10% lower) cost has been incurred.

In addition, we shall be entitled to dispose of the goods subject to the contract otherwise after the aforementioned expiry of the deadline in accordance with Clause 4.8 Sentence 1 and to supply the customer again within a reasonable period of time (= original delivery period plus 7 calendar days dispatch scheduling period).

4.10 In the event of a delayed delivery order or call-off on the part of the customer, we shall be entitled to postpone the delivery by the same period of the customer’s backlog, plus a dispatch scheduling period of 4 working days, at the location of our registered office.

Insofar as a call-off purchase is concluded, the individual call-offs of the customer must be received by us at least 6 weeks before the desired delivery date, insofar as a shorter call-off or delivery period has not been expressly agreed. In the absence of express agreements to the contrary, the customer shall be obligated to take delivery of the purchased goods in full within one year of receipt of the order confirmation. If the call-offs are not made on time, we shall be entitled to send a reminder for the call-offs and their scheduling and to set a grace period for the call-off and scheduling of 14 days, which must provide for acceptance within 4 weeks after receipt of our request. In the event of the fruitless expiry of said deadline, we shall be entitled to withdraw from the contract or to demand damages in lieu of performance. We do not have to refer to the rights arising from this clause again in this notice. Clause 4.8 Para. 2 shall apply accordingly.

4.11 We shall owe user information for our products, as well as a product label, only – unless expressly agreed otherwise in writing or text form, or if we are subject to a deviating statutory regulation – in German or, at our discretion, in English.

4.12 We reserve the right to modify the specification of the goods to the extent that legal requirements make this necessary, provided that this modification does not result in any deterioration in terms of quality and usability for the usual purpose and, to the extent that suitability for a specific purpose has been agreed, for this purpose.

4.13 We shall be entitled to make excess or short deliveries of up to 5% of the agreed delivery quantity.

4.14 The minimum order value is EUR 150.00 net. In the case of orders below the stated value, the customer shall pay a surcharge for small quantities of EUR 15.00 net.

4.15 We are further entitled to deliver products with customary deviations in quality, dimensions, weight, colour and equipment. Such goods shall be deemed to be in conformity with the contract.

4.16 If the delivery item contains software or consists of software, the customer shall only receive a simple irrevocable, non-exclusive right of use for the purpose of using the delivery item or the software. The customer shall be entitled to re-license this right of use, but exclusively for the purpose of the intended use of the delivery item, if he sells or transfers the delivery item to third parties.

4.17 If the delivery item contains software, the customer shall not be entitled to receive the source code of the software unless expressly agreed otherwise. The aforementioned shall not apply to the extent that we do not agree to maintain and/or correct errors in the software at customary commercial conditions in the event of necessity. In such a case, the customer shall be entitled to receive the source code, but only for the purpose of maintenance and error correction.

4.18 If the delivery item contains software, the customer shall not be entitled to reverse engineer the software (re-engineering) as long as we declare our willingness to remedy defects or to maintain the delivery item at customary market conditions.

5. Delivery / place of performance / delivery time / delay in delivery / packaging

5.1 Binding delivery dates and deadlines must be expressly agreed. In the case of non-binding or approximate (rough, estimated, etc.) delivery dates and periods, we shall endeavour to comply with them to the best of our ability.

5.2 Delivery and/or performance periods shall commence upon receipt of our order confirmation by the customer, or, in the absence thereof, 3 *working days at our registered office after receipt of the customer's order by us and acceptance thereof 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, that any agreed advance payments or securities and the necessary level of cooperation have been provided and/or fulfilled in full by the customer. The same shall apply to delivery dates and performance deadlines. If the customer has requested changes after placing the order, a new reasonable delivery and/or performance period shall commence upon our confirmation of the change. Reasonable means a delivery period which corresponds to the original remaining delivery period plus the period of the change negotiations and a dispatch scheduling period of 14 calendar days.

5.3 Deliveries and/or services before the expiry of the delivery/performance period are permissible. The day of delivery shall be deemed to be the day of notification of readiness for shipping in the case of an obligation to collect, otherwise the day of shipping of the products, and the day of delivery at the agreed place of delivery in the case of an obligation to deliver.

We shall be entitled to make partial deliveries within the delivery period if the partial delivery is usable for the customer within the scope of the contractually intended purpose, the delivery of the remaining ordered goods is ensured and the customer does not incur any significant additional expense or additional costs as a result, unless we agree to bear said costs. The additional expenditure shall be deemed significant if it exceeds 5% of the net remuneration for the service contractually owed.

5.4 If we are in default of delivery, the customer must first set us a reasonable grace period of at least 14 calendar days for performance. If said period expires without success, the assertion of claims for damages due to a breach of duty – irrespective of the underlying reason – shall only be permitted in accordance with the provision set out in Clause 11.

5.5 We shall not be in default as long as the customer is in default with the fulfilment of obligations vis-a-vis us, including those from other contracts.

5.6 To the extent that the means of transport to be provided by the customer are not available, we shall not be obligated to deliver, unless we have undertaken to provide the means of transport or an obligation to deliver has been agreed. However, we shall be entitled to effect delivery by means of our own (or hired) means of transport in the event of an executable shipping or call-off order. In this case, the goods shall travel at the customer's risk.

The customer shall assist our personnel and/or our vicarious agents in unloading and retrieving the goods if this is deemed to be necessary, as well as technically and logistically reasonable for the customer. The unloading of said goods shall be the customer's responsibility in the event of an agreed obligation to deliver and shall be at the customer's expense.

5.7 If no collection date is specified in the order, which we confirm or must confirm in order for it to become binding – or if acceptance does not take place on the agreed collection date – we shall, at our discretion, dispatch the goods that are the subject of the contract with a carrier commissioned by us or store the goods that are the subject of the contract at the customer's expense. The packaging, transport and insurance costs thereby incurred (the latter insofar as transport insurance has been agreed) shall be additionally invoiced to the customer upon shipping.

In the absence of any other agreement, we shall only take back packaging on the basis (and to the extent) of statutory obligations.

5.8 In the event of storage, the customer shall pay a flat-rate storage fee of 0.5% of the net remuneration per week for the stored goods. The customer reserves the right to prove that a significantly lower (more than 10% lower) cost has been incurred.

6. Force majeure / self-delivery

6.1 If, for reasons for which we are not responsible, we are unable to obtain supplies or services from our sub-suppliers for the performance of our contractual delivery or service owed, despite proper and sufficient coverage prior to the conclusion of the contract with the customer in accordance with the quantity and quality from our delivery or service agreement with the customer, i.e. with the fulfilment of the supplier obligation vis-a-vis us, we – according to the type of goods, quantity of goods and delivery time and/or service (*congruent coverage*) – cannot fulfil the contract with the customer, or not correctly, or not in time, or in the event of force majeure that is of a not insignificant duration – i.e. lasting longer than 14 calendar days – we shall inform our customer immediately in writing or in text form. In this case, we shall be entitled to postpone the delivery for the duration of the impediment or to withdraw from the contract in whole (or in part) due to the part not yet fulfilled, insofar as we have fulfilled our aforementioned duty to inform and have not assumed the procurement risk within the meaning of Section 276 German Civil Code (BGB) or a delivery guarantee. Force majeure shall be deemed to include strikes, lock-outs, official interventions, shortages of energy and raw materials, transport bottlenecks or obstacles through no fault of our own, operational hindrances through no fault of our own – e.g. due to fire, water and machine damage – as well as all other hindrances which, viewed objectively, have not been culpably caused by us.

6.2 If a delivery date or a delivery period has been bindingly agreed, and if the agreed delivery date or the agreed delivery period is exceeded due to events according to Clause 6.1, the customer shall be entitled to withdraw from the contract due to the part not yet fulfilled after a grace period of 14 calendar days has expired fruitlessly. The assertion of further claims by the customer, in particular, claims for damages, shall be excluded in this case.

6.3 The aforementioned provision pursuant to Clause 6.2 shall apply analogously if, for the reasons stated in Clause 6.1, it is objectively unreasonable for the customer to continue to adhere to the contract, even without a contractual agreement on a fixed delivery date.

7. Dispatch / transfer of risk / acceptance

7.1 Unless expressly agreed otherwise, delivery shall be made Ex Works Incoterms® 2020. In the case of an obligation to collect or dispatch those goods subject to contract, the goods shall travel uninsured at the risk and expense of the customer in the absence of any other express agreement.

7.2 In the absence of any other agreement, we reserve the right to choose the transport route and the means of transport in the case of agreed dispatch. However, we shall endeavour to take into account the customer's wishes with regard to the mode and route of dispatch, without the customer having any claim thereto. Any additional costs resulting from this – even in the case of agreed freight-free delivery – shall be borne by the customer, as shall the transport and insurance costs.

If said shipment is delayed compared to the agreed time at the request (or through the fault) of the customer, we shall store the goods at the expense and risk of the customer. Clause 5.8 shall apply accordingly in this respect.
In this case, a notification of readiness for dispatch shall be deemed equivalent to dispatch.

7.3 The risk of accidental loss (or deterioration) shall pass to the customer in the case of an agreed obligation to collect the goods subject to contract, or upon the handover of the products to be delivered to the customer, in the case of an agreed obligation for the goods subject to contract to be shipped by a forwarding agent, the carrier or any form of undertaking otherwise designated to execute said shipment, but at the latest upon leaving our works or our warehouse, or our company branch or the manufacturer's works. The aforementioned shall also apply if an agreed partial delivery is made.
In the case of an agreed obligation to deliver, the risk shall pass when the goods are made available for unloading at the agreed place of delivery.

7.4 If the shipment is delayed because we exercise our right of retention as a result of the customer's default in payment (either 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 notification vis-a-vis the customer that the goods are ready for dispatch and/or performance.

8. Notice of defects / breach of duty in the form of poor performance due to material defects (warranty), extended warranty

8.1 The customer shall notify us in writing or in text form of any recognisable material defects immediately, but no later than 12 calendar days after collection in the case of delivery ex works or storage location, and otherwise subsequent to delivery, of any hidden material defects immediately after their discovery, but no later than within the warranty limitation period in accordance with Clause 8.6. Failure to give notice of defects in due time or form shall preclude the assertion any claim by the customer for breach of duty due to material defects. This shall not apply in the event of intentional, grossly negligent or fraudulent action on our part, in the event of injury to body, life or health or the assumption of a guarantee of freedom from defects, or of a procurement risk in accordance with Section 276 German Civil Code (BGB) within the meaning of Clause 4.6, or other statutorily stipulated liability and in the event of a claim for recourse in the supply chain (Section 478 German Civil Code [BGB]).

8.2 In addition, notice of material defects recognisable upon delivery must be given to the delivering transport company and the written or textual recording of said defects must be arranged by the customer on site. Failure to initiate the recording of the notice of defects vis-a-vis the delivering transport company in due time or form shall preclude any assertion of claims by the customer for breach of duty due to material defects. This shall not apply in the event of intentional, grossly negligent or fraudulent action on our part, in the event of injury to body, life or health or the assumption of a guarantee of freedom from defects, or of a procurement risk in accordance with Section 276 German Civil Code (BGB) within the meaning of Clause 4.6, or other statutorily stipulated liability and in the event of a claim for recourse in the supply chain (Section 478 German Civil Code [BGB]).

Insofar as defects in terms of the number of items and weight were already recognisable upon delivery in accordance with the above inspection obligations, the customer must lodge a complaint about these defects vis-a-vis the delivering transport company upon receipt of the products and have the complaint certified in writing or in text form. Failure to notify the transport company in due time, or the failure of the transport company to certify the defect in due form, shall also preclude the assertion of any claim by the customer for breach of duty due to material defects. This shall not apply in the event of intentional, grossly negligent or fraudulent action on our part, in the event of injury to body, life or health or the assumption of a guarantee of freedom from defects, or of a procurement risk in accordance with Section 276 German Civil Code (BGB) within the meaning of Clause 4.6, or other statutorily stipulated liability and in the event of a claim for recourse in the supply chain (Section 478 German Civil Code [BGB]).

8.3 Upon commencement of processing, treatment, combination or mixing with other items, the delivered products shall be deemed to have been approved by the customer in accordance with the contract. The same shall apply in the event of onward shipment from the original place of destination, insofar as this does not correspond to the usual use of the delivered goods.
Before commencing any of the aforementioned activities, or any other use of the products delivered by us, the customer shall be responsible for clarifying – by means of appropriate tests in terms of scope and methodology – as to whether the products delivered are suitable for the intended uses.

8.4 *Other breaches of duty on our part must be notified to us in writing by the customer without undue delay, setting a reasonable remedy period, before the assertion of further rights; otherwise, the customer shall forfeit any rights resulting therefrom.* This shall not apply in the event of intentional, grossly negligent or fraudulent action on our part, in the event of injury to body, life or health or the assumption of a guarantee or procurement risk pursuant to Section 276 German Civil Code (BGB) within the meaning of Clause 4.6, or in the event of other statutorily stipulated liability.

8.5 Defects for which the customer is responsible, and any unjustified complaints, shall be remedied by us at the customer's expense, insofar as the customer is a registered trader within the meaning of the German Commercial Code (HGB), without a separate order having to be placed by the customer.

8.6 For claims arising from breach of duty due to poor performance in the form of material defects, the limitation period shall, unless expressly agreed otherwise, be 12 months, calculated from the date of transfer of risk (see Clause 7.3), in the event of refusal to accept or take delivery on the part of the customer from the date of notification of readiness to take delivery of goods. This shall not apply to claims for damages arising from a guarantee, the assumption of a procurement risk pursuant to Section 276 German Civil Code (BGB) within the meaning of Clause 4.6, claims due to injury to body, life or health, any fraudulent, intentional or grossly negligent action on our part, or in the cases of Section 478 (recourse in the supply chain), Section 438 Para. 1 No. 2 (erection of buildings and delivery of items for buildings) and Section 634a Para. 1 No. 2 German Civil Code (BGB) (construction defects), or if a longer limitation period is otherwise mandatory by law. A reversal of the burden of proof is not associated with the above provision. Clause 8.13 shall remain unaffected.

8.7 If the customer or a third-party improperly repairs the products delivered by us and if the defect is attributable thereto, we shall not be liable for the resulting consequences. The same shall apply to changes made to the delivery item without our prior consent.

8.8 Further claims of the customer due to (or in connection with) defects or consequential damage caused by defects – irrespective of the reason – shall only exist in accordance with the provisions of Clause 11.

8.9 Our warranty (*claims arising from a breach of duty due to poor performance in the case of material defects*) and any subsequent liability shall be excluded to the extent that defects and related damage are not demonstrably due to defective material, defective construction, or defective workmanship, or defective manufacturing materials or, insofar as owed, defective instructions for use. In particular, the warranty and any resulting liability for breach of duty due to poor performance shall be excluded for the consequences of incorrect use of the delivery item, unsuitable storage conditions for the same item, and the consequences of chemical, electromagnetic, mechanical or electrolytic influences on the delivery item, which do not correspond to those influences inherent in the contract. The aforementioned shall not apply in the event of fraudulent, grossly negligent or intentional action on our part, or injury to body, life or health, the assumption of a guarantee, a procurement risk pursuant to Section 276 German Civil Code (BGB) within the meaning of Clause 4.6 and/or in the event of other statutorily stipulated liability.

Any warranty and liability shall be excluded if the customer does not observe the technical regulations or instructions for use stipulated by us in accordance with the contract concluded, or our technical regulations or instructions for use stipulated in this respect, insofar as the defect is attributable thereto.

8.10 The customer shall have no right to the assertion of a claim with respect to expenses incurred in the course of supplementary performance, including costs of travel, transport, labour, and material, to the extent that expenses are increased because the goods have subsequently been brought to another location than the customer's place of business, unless doing so complies with the intended use of the goods. Section 439 Para. 3 German Civil Code (BGB) – the bearing of costs for installation and removal in the case of defective products by the seller – shall remain unaffected.

8.11 Claims for defects shall not exist in the case of only insignificant (i.e. barely visible/perceptible) deviation from the agreed or usual quality or usability.

8.12 We shall not assume any warranty pursuant to Section 478 German Civil Code (BGB) – recourse in the supply chain / supplier recourse if the customer has processed, or worked on, or otherwise modified the products supplied by us under the contract, insofar as this does not correspond to the contractually agreed intended purpose of the products.

8.13 We shall provide the customer with the remedy of defects listed in Clauses 8.14 - 8.18 for stationary installed indoor and outdoor LED lighting for a period of a further 4 years ("**Extended Warranty Period**"), provided that the following warranty conditions are complied with in full. This Extended Warranty Period shall immediately follow the warranty period specified in 8.6.

8.14 Within the Extended Warranty Period, we warrant to the customer – however, only under the following conditions – a failure-free service life for LED lamp of up to 50,000 operating hours at an ambient temperature of up to +25°C.
A failure of the LED lamp shall only be deemed to have occurred within the meaning of this Extended Warranty Period if:
a) the luminous flux decrease of the ELSPRO product exceeds 6% per year and
b) the failure rate of the total LED modules within a lamp exceeds 0.2% / 1,000h.
Failure within the meaning of this condition does not include failures caused by environmental, external influences or the range of radio control.

8.15 Other points excluded from the assertion of claims under this Extended Warranty are all consumables of the delivered products such as batteries, illuminants (other than LED illuminants) and fuses.
Furthermore, failures shall also be excluded, which are due to
- improper installation and connection
- improper commissioning;
- normal wear and tear or lack of maintenance;
- incorrect operation of the unit;
- mechanical damage, e.g. due to knocks or falling down;
- improper repair, insofar as the malfunction is attributable thereto;
- the installation of foreign parts;
- external influences such as fire, water, abnormal environmental conditions;
- wilful destruction;
- lightning strike.

8.16 Within the Extended Warranty Period referred to in Clause 8.13, we shall remedy, in accordance with Para. 2 below, all defects in the product which are demonstrably due to a material or manufacturing defect, insofar as these have led to a failure within the meaning of Clause 8.14 above. We shall undertake to replace, exchange or repair the defective part at our discretion and at our expense within the Extended Warranty Period pursuant to Clause 8.13, but only in the event of a warranty case within the meaning of Clauses 8.13 - 8.15 above, insofar as the exchange parts on the defective ELSPRO product, which have been replaced by us, become our property.
Both the transport of the defective product to us and the return transport shall be at the risk of the customer.

8.17 Entitlement to the provision of services under the Extended Warranty shall apply only to the country in which the ELSPRO product was purchased.

8.18 Claims under this Extended Warranty Agreement shall only exist if the customer – after discovering a defect in the product delivered by us – immediately notifies us thereof in writing or in text form. Otherwise, he shall lose any right to the assertion of claims arising from this Extended Warranty. With the notification of a defect, the data on the type plate on the product or the resulting reference values (as proof of the claim) shall be a prerequisite for the accrual of the customer's claim under the Extended Warranty.

The claim for rectification of defects under the Extended Warranty shall further require that the customer cumulatively:
- provides us with a written, detailed description of the defect in writing or text form – together with the grounds for his claim – immediately after discovery of the defect;
- sends the product (insofar as it is transportable) to us for the purpose of repair, in a properly protected state for transport, at his own expense and immediately after discovery of the defect;
- ensures that the defect does not consist of a non-reproducible software error;
- uses the product exclusively for its intended purpose and in accordance with the manufacturer's operating instructions provided for this purpose, as well as the instructions for use and warnings issued;
- that the repair is not technically or economically unreasonable for us. The repair is deemed to be economically unreasonable if the expenses required for this on our part exceed 40% of the net purchase price of the product at the time of purchase by the customer. The repair shall be deemed technically unreasonable if any spare parts required can no longer be obtained from our contractual suppliers.

9. Prices / terms of payment / defence of uncertainty

9.1 All prices are quoted in EURO net excluding packaging, sea or air transport packaging, freight, postage and, if transport insurance has been agreed, insurance costs, plus value added tax to be borne by the customer (if legally applicable) in the respective legally prescribed amount when payment is due, ex works or ex warehouse, plus any country-specific duties in the case of deliveries to countries other than the Federal Republic of Germany, plus customs duties, other fees and public charges for the delivery/service.

9.2 Payment methods other than cash or bank transfer require separate, express agreement between us and the customer; this shall apply, in particular, to the issue of cheques and bills of exchange.

9.3 Insofar as taxes or levies are incurred by the customer or by us on the service rendered by us (withholding tax), the customer shall indemnify us against such taxes and levies.

9.4 Unless otherwise agreed, we shall be entitled to issue partial invoices in accordance with the progress of the order processing and/or to demand partial payments in accordance with the progress of the processing.

9.5 If the customer pays in a currency other than EURO, fulfilment shall only occur if the foreign currency payment corresponds to the agreed EURO amount on the date of receipt of payment.

9.6 Services which are not part of the agreed scope of delivery shall, in the absence of any agreement to the contrary, be performed by us on the basis of our currently valid general price lists for such services.

9.7 We shall be entitled to unilaterally increase the amount of remuneration accordingly in the event of an increase in material production and/or material and/or product procurement costs, wage and ancillary wage costs, social security contributions, as well as energy costs and costs due to environmental regulations, and/or currency regulations and/or changes in customs duties, and/or freight rates and/or public charges, if these directly (or indirectly) influence the goods production or procurement costs, or the costs of our contractually agreed services, and if there are more than 4 months between conclusion of the contract and delivery. An increase within the aforementioned meaning shall be excluded insofar as the cost increase in individual (or all of the aforementioned) factors is offset by a cost reduction in other of the aforementioned factors in relation to the total cost burden for the delivery (*netting*). If the aforementioned cost factors are reduced without the cost reduction being offset by the increase in other aforementioned cost factors, the cost reduction shall be passed on to the customer within the framework of a price reduction.

If the new price is 20% or more above the original price due to our aforementioned right to adjust the price, the customer shall be entitled to withdraw from contracts not yet completely fulfilled for the part not yet fulfilled. However, he may only assert this right immediately after notification of the increased price.

9.8 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 subsequent to the conclusion of the contract.

9.9 Agreed payment periods shall run from the date of delivery.

9.10 Upon the occurrence of default, interest on arrears shall be charged at a rate of 9% above the base interest rate applicable at the time the claim for payment falls due (Section 247 German Civil Code [BGB]). We reserve the right to assert a claim for further damages.

9.11 In the event of an agreed transfer, the date of payment shall be the date on which the money is received by us or credited to our account or to the account of the paying agent specified by us.

9.12 Default of payment by the customer shall cause all payment claims arising from the business relationship with the customer to become due immediately. Irrespective of deferment agreements, bill of exchange and instalment payment agreements, all customer liabilities vis-a-vis us shall be due for payment immediately in this case.

9.13. If payment terms are not met or circumstances become known or recognisable which, according to our prudent commercial judgement, give rise to justified doubts concerning the creditworthiness of the customer, *including facts which already existed at the time of conclusion of the contract but which were not known to us or should have been known to us*, we shall be entitled, without prejudice to further statutory rights in such cases, to cease further work on current orders or deliveries and to demand advance payments or the provision of a bank guarantee from a German credit institution affiliated to the Deposit Protection Fund ("Einlagensicherungsfonds") for outstanding deliveries and, after the unsuccessful expiry of a reasonable period of grace for the provision of such securities – and without prejudice to further statutory rights – to withdraw from the contract with regard to the part not yet fulfilled. The customer shall be obligated to compensate us for all damages resulting from the non-performance of contract.

9.14 The customer shall only have a right of retention or a right of set-off with regard to counter-claims that are undisputed or which have been legally established. This shall apply analogously if said counter-claim put forward for set-off is *in synallagma* with our claim (i.e. in the reciprocal relationship of two performances of service in the contract concluded with us).

9.15 A right of retention may only be exercised by the customer insofar as his counter-claim is based on the same contractual relationship.

9.16 Incoming payments shall first be used to repay the costs, then the interest and finally the principal claims according to their age.

A contrary provision of the customer at the time of payment is irrelevant.

9.17 For the timeliness of payment, irrespective of the means by which it is made, only the date of entry in our account shall be decisive. In the case of payments by cheque, the date on which the respective value is received on our account shall be decisive. Payments by the customer must be made free of postage and charges in our favour.

10. Retention of title, seizure

10.1 We reserve title to all goods delivered by us (hereinafter collectively referred to as "**goods subject to retention of title**") until all our claims arising from the business relationship with the customer – including claims arising in the future from contracts concluded at a later date – have been settled. This shall also apply to a balance in our favour if individual or all receivables are included by us in a running invoice (current account) and the balance has been struck.

10.2 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 assigned to us in the amount of the value of the goods subject to retention of title.

10.3 The customer shall be entitled to resell the delivered products in the ordinary course of business. He shall not be permitted to any other right of disposal, in particular, pledging or granting of ownership by way of security. If the goods subject to retention of title are not paid for immediately by the third-party purchaser upon resale, the customer shall be obligated to resell only when subject to retention of title. The right to resell the goods subject to retention of title shall lapse without further ado if the customer suspends payment or defaults on payment to us.

10.4 The customer hereby assigns to us all receivables – including securities and ancillary rights – accruing to him from (or in connection with) the resale of goods subject to retention of title vis-a-vis the end customer or third-parties. He may not enter into any agreement with his purchasers which excludes (or impairs) our rights in any way or nullifies the advance assignment of said claim. In the event of the sale of goods subject to retention of title with other items, the claim against the third-party purchaser shall be deemed assigned in the amount of the delivery price agreed between us and the customer, unless the amounts attributable to the individual goods can be determined from the invoice.

10.5 The customer shall remain entitled to collect the claim assigned to us until our revocation, which is permissible at any time. At our request, he shall be obligated to immediately provide us with all information and documents required for the collection of assigned claims and, if we do not undertake this ourselves, to immediately inform his customers of the assignment to us.

10.6 If the customer includes receivables from the resale of goods subject to retention of title in a current account relationship existing with his customers, he shall hereby assign to us any recognised closing balance 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.

10.7 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 recourse or non-recourse factoring, or has entered into other agreements on the basis of which our current (or future) security rights may be impaired in accordance with Clause 10, the customer must notify us of this immediately. In the event of non-recourse factoring, we shall be entitled to withdraw from the contract and to demand the return of products already delivered. The same shall apply in the case of recourse factoring if the customer cannot freely dispose of the purchase price of the claim under the contract with the factor.

10.8 In the event of actions contrary to the contract for which the customer is responsible, in particular, in the event of default in payment, we shall be entitled to take back all goods subject to retention of title after withdrawing from the contract. In such a case, the customer shall be obligated to surrender the goods without further ado. In order to ascertain the stock of those goods delivered by us, we may enter the customer's business premises at any time during normal business hours. The taking back of those goods subject to retention of title shall only constitute a withdrawal from the contract if we expressly declare this in writing, or if mandatory statutory provisions provide for this. The customer must inform us immediately in writing of any access by third parties to goods subject to retention of title or to claims assigned to us.

10.9 If the value of the securities existing for us in accordance with the above provisions exceeds the secured receivables by more than 10% in total, we shall be obligated to release those securities at our discretion to this extent, at the customer's request.

10.10 The processing and treatment of the goods subject to retention of title shall be carried out for us as manufacturer without, however, placing us under obligation. If the reserved goods are processed or inseparably combined with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the net invoice amount of our goods to the net invoice amounts of the other processed (or combined) items. If our goods are combined with other movable objects to form a uniform object, which is to be regarded as the main object, the customer shall hereby assign to us co-ownership thereof in the same proportional amount. The customer shall hold the ownership or co-ownership in safe custody for us free-of-charge. Said co-ownership rights arising hereunder shall be deemed to be goods subject to retention of title. Upon our request, the customer shall be obligated, at any time, to provide us with the information required to pursue our ownership or co-ownership rights.

10.11 If, in the case of deliveries made abroad, certain measures and/or declarations are required on our part in the importing country, in order for the aforementioned reservation of title or the other rights referred to therein to become effective, the customer shall notify us of this in writing or in text form and shall carry out or submit such measures and/or declarations without delay and at its own expense. We shall cooperate in this to the necessary extent. If the law of the importing country does not permit retention of title, but allows us to reserve other rights to the delivery item, we may exercise all rights of this kind at our reasonable discretion (Section 315 German Civil Code [BGB]). To the extent that an equivalent protection of our claims vis-a-vis the customer is not thereby achieved, the customer shall be obligated to promptly provide us with other customary securities vis-a-vis the delivered goods at our reasonable discretion (Section 315 German Civil Code [BGB]) and at its own expense.

10.12 In the event of seizures or other interventions by third-parties, the customer must notify us in writing without delay, in order that we can bring corresponding legal action in accordance with Section 771 German Code of Civil Procedure (ZPO). To the extent that the third-party is not in a position to reimburse us for the in-court and out-of-court costs of legal action pursuant to Section 771 German Code of Civil Procedure (ZPO), the customer shall be liable to us for the loss incurred by us.

11. Exclusion / limitation of liability

11.1 Subject to the following exceptions, we shall *not* be liable, in particular, for claims of the customer for damages or reimbursement of expenses – irrespective of the pertinent legal grounds – in the event of a breach of obligations arising from the contractual relationship with the customer.

11.2 The above exclusion of liability pursuant to Clause 11.1 shall not apply:

- for our own intentional or grossly negligent breach of duty and intentional or grossly negligent breach of duty by legal representatives or vicarious agents;
- for a breach of essential contractual obligations; "essential contractual obligations" are those whose fulfilment characterises the contract and upon which the customer may rely.
- in the event of injury to body, life and health, including by legal representatives or vicarious agents;
- insofar as we have assumed a guarantee for the quality of our goods or the existence of a performance outcome, or a procurement risk in accordance with Section 276 German Civil Code (BGB) within the meaning of Clause 4.6;
- in the case of liability according to the Product Liability Act (ProdHaftG) or in the event of other statutorily stipulated liability.

11.3 In the event that we (or our vicarious agents) are only deemed culpable of slight negligence and no case as per the above Clause 11.2 exists, 4th indent, we shall only be liable for the foreseeable damage typical for the contract, even in the event of a breach of material contractual obligations.

11.4 Our liability shall be limited to a maximum liability amount of EURO 500,000.00 for each individual case of damage. This shall not apply if we are guilty of malice, intent or gross negligence, in the event of a breach of an essential contractual obligation, for claims due to injury to body, life or health, as well as in the event of a claim based on a tortious act or an expressly assumed guarantee, or the assumption of a procurement risk pursuant to Section 276 German Civil Code (BGB) within the meaning of Clause 4.6, or in cases of legally stipulated deviating higher liability sums. Any further liability shall be excluded.

11.5 The exclusions or limitations of liability pursuant to the above Clauses 11.1 to 11.4 and Clause 11.6 shall apply to the same extent in favour of our executive bodies, our executive and non-executive employees, other vicarious agents and our subcontractors.

11.6 Claims by the customer for damages arising from this contractual relationship may only be asserted within a preclusion period of one year from the statutory commencement of the limitation period. This shall not apply if we are guilty of intent or gross negligence, for claims due to injury to body, life or health, as well as in the case of a claim based on a tortious act or an expressly assumed guarantee, or the assumption of a procurement risk pursuant to Section 276 German Civil Code (BGB) within the meaning of Clause 4.6, or in the case that a longer limitation period is statutorily applicable.

11.7 A reversal of the burden of proof is not associated with the above provisions.

12. Place of performance / place of jurisdiction / applicable law

12.1 The place of performance for all contractual obligations shall be the registered office of our company, with the exception of the assumption of an obligation to effect delivery on our part, or as otherwise agreed.

12.2 The exclusive place of jurisdiction for all disputes – insofar as the customer is a merchant within the meaning of the German Commercial Code (HGB) – shall be the registered office of our company. For the sake of clarity, this jurisdiction provision of Sentences 1 and 2 shall also apply to such facts between us and the customer, which may lead to non-contractual claims within the meaning of EC Regulation No. 864 / 2007. However, we shall also be entitled to bring legal action against the customer at his general place of jurisdiction.

12.3 All legal relationships between the customer and us shall be governed exclusively by the laws of the Federal Republic of Germany, in particular, to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG). It is expressly clarified that this choice of law is also to be understood as one in the sense of Art. 14 Para. 1 b) EC Regulation No. 864 / 2007 and shall, therefore, also apply to non-contractual claims in the sense of this regulation. If foreign law is mandatory in an individual case, our GTC shall be interpreted in such a way that the economic purpose pursued with them is safeguarded to the greatest extent possible.

13. Third-party property rights, licence

13.1 Unless otherwise expressly agreed between us and the customer, we shall only be obligated to provide the delivery free of industrial property rights and copyrights of third-parties in the Federal Republic of Germany.

If a third-party asserts justified claims due to an infringement of industrial property rights by products delivered by us to the customer, we shall be liable to the customer within the period stipulated in Clause 8.6 as follows:

- We shall, at our discretion, first attempt to obtain, at our expense, either a right of use for the deliveries concerned, or modify the delivery item in such a way that the property right is not infringed, or replace it, while complying with the contractually agreed properties. Should this not be possible for us, or if we refuse to do so, the customer shall be entitled to the assertion of its statutory rights, which shall, however, be governed by the contract and these General Terms and Conditions of Delivery and Order, as modified.
- The customer shall only be entitled to rights vis-a-vis us in the event of an infringement of property rights by our delivery items, if he notifies us immediately in writing or in text form of the claims asserted by third-parties, does not acknowledge an infringement and all defensive measures and settlement negotiations remain reserved for us.
- If the customer discontinues the use of the products, in order to mitigate damages or for other important reasons, he shall be obligated to expressly point out to the third-party that the discontinuation of use does not constitute an acknowledgement of an infringement of property rights.
- If, as a result of the use of the products supplied by us, the customer is the subject of legal action by third-parties for the infringement of property rights, the customer shall undertake to inform us of this immediately in writing or in text form and to give us the opportunity to participate in any legal dispute. The customer shall support us in every respect in the conduct of said legal dispute by passing on all relevant information for the legal dispute originating from (or accumulating in) its sphere of influence. The customer shall refrain from actions that could impair our legal position.

13.2 Claims of the customer shall be excluded, to the extent that the customer is responsible for the infringement of property rights. Claims of the customer shall also be excluded insofar as the infringement of property rights is caused by specifications determined especially by the customer, by an application not foreseeable by us, or by the fact that the products are modified by the customer or used together with products not supplied by us, which do not correspond to the intended use, insofar as the infringement of property rights is based thereon.

13.3 The customer shall be granted the right to use the services in accordance with the contract upon proper fulfilment of its contractual obligations.

All copyrights, patent rights or other industrial property rights shall remain with us unless expressly agreed otherwise.
Insofar as inventions capable of being protected by industrial property rights are created by us in the course of the performance of contract, we shall grant the customer a non-exclusive and non-transferable right of use thereto on economically preferential terms. The customer's right to receive all rights pertaining to the invention – in the event that the production of the invention is a primary contractual obligation on our part – shall remain unaffected.

14. Export control / product approval / import regulations

14.1 In the absence of contractual agreements with the customer to the contrary, the delivered goods are intended for initial marketing within the Federal Republic of Germany or, in the case of a delivery outside the Federal Republic of Germany, to the agreed *country of initial delivery*.

14.2 The export of certain goods by the customer from there may – e.g. due to their nature, intended use or final destination – be subject to the requirement of authorisation under public law. The customer itself shall be obligated to check this and to strictly observe any and all export regulations and embargos relevant for said goods, in particular, those of the European Union (EU), Germany or other EU Member States and, if applicable, the USA or Asian or Arab countries, as well as all third countries concerned, to the extent that it exports the products supplied by us or has them exported by third-parties, and to obtain any necessary export or import licence in good time.

In addition thereto, the customer shall be obligated to ensure that the necessary national product approvals or product registrations are obtained by him before shipment to a country other than the country of initial delivery agreed with us, and that the requirements for the provision of user information in the national language, as well as all import regulations enshrined in the national law of the country concerned, are fulfilled.

14.3 The customer shall, in particular, check and ensure, and prove to us upon request, that

- the products provided are not intended for use in connection with armaments, nuclear technology or weapons technology;
- no companies and persons named in the US Denied Persons List (DPL) are supplied with goods, software and technology originating from the US;
- no companies and persons named on the US Warning List, US Entity List or US Specially Designated Nationals List are supplied with products originating from the US without the relevant authorisation;
- companies and individuals named on the Specially Designated Terrorists, Foreign Terrorist Organizations, Specially Designated Global Terrorists or EU Terrorist List, or other relevant negative export control lists, are not supplied;
- no military recipients are supplied with the products we deliver;
- no recipients are supplied, who are deemed to be in breach of other export control regulations, in particular, those of the EU or ASEAN states;
- all early warning notices of the competent German or national authorities of the respective country of origin of delivery are observed.

14.4 Access to, as well as the use and export of, goods delivered by us may only be carried out by (and at the instigation of) the customer, if the above-mentioned checks and safeguards have been carried out by the customer; otherwise, the customer shall refrain from the intended export or transfer to third parties, and we shall not be obligated to perform the underlying service.

14.5 In the event that the goods supplied by us are passed on to third-parties, the customer undertakes to obligate these third-parties in the same way as in Clauses 14.1-14.4 and to inform them of the need to comply with such statutory provisions.

14.6 In the event of agreed delivery outside the Federal Republic of Germany, the customer shall ensure – at its own expense – that all national import regulations of the country of initial delivery are fulfilled with regard to the goods to be delivered by us.

14.7 The customer shall indemnify us against all damages and expenses resulting from a culpable breach of the aforementioned obligations pursuant to Clauses 14.1-14.7.

15. Opening of insolvency proceedings / incoterms® / written form / reservation of right of amendment / severability clause

15.1 An application for the opening of insolvency proceedings against the customer, or the customer's suspension of payments not based on rights of retention or other rights – despite prior warning – shall entitle us, in the event that the customer is in a state of breach of duty vis-a-vis us at that time, to withdraw from the contract at any time, or to make the performance of the contract dependent on the prior fulfilment of the payment obligation. In the case of continuing obligations, we shall be entitled to terminate the contract without notice instead of withdrawing from it. Section 314 German Civil Code (BGB) shall remain unaffected. If the delivery of the object of sale or our performance of service has already taken place, the consideration shall become due immediately in the aforementioned cases. We shall also be entitled to reclaim the object of sale in the aforementioned cases and to retain it until the purchase price has been paid in full.

15.2 Insofar as trade clauses according to International Commercial Terms (Incoterms®) are agreed, the Incoterms® 2020 shall apply.

15.3 All agreements, ancillary agreements, assurances and amendments to the contract must be in writing or text form. This shall also apply to the waiver of the written form agreement itself. The priority of the individual agreement in written, text or verbal form (Section 305b German Civil Code [BGB]) shall remain unaffected.

15.4 In the event of factual reasons – namely changes in the relevant legislation, changes in the relevant case law, consequences of necessary technical changes, additions to the services offered, or changes in our services linked to the services of third-parties, which have an impact on our services – we shall reserve the right to unilaterally amend the GTC and our regulations on data protection at our reasonable discretion (Section 315 I German Civil Code [BGB]), i.e. taking into account the interests of both parties, whereby the amendments may extend to the scope of the service, the possibility of using it and the obligation to pay for it, as well as contractual deadlines, provided that said amendment contains an appropriate compensation for disadvantages in favour of the customer. The changes shall be notified to the contractual partner by email and shall enter into force upon receipt of the notification, on the condition that the contractual partner has not objected to the change in whole (or in part) in writing (or by email) within six weeks of receipt of the notification, insofar as we have again expressly referred to this circumstance in the notification of change. We shall specifically draw your attention to this approval effect in the notice of amendment. Amendments shall not have any retroactive effect on services rendered and utilised before their entry into force. For this reason, we recommend that you save the version of our General Terms and Conditions and the regulations on data protection provided to you during registration, because we do not store any personal data for you. If a contractual partner objects to the notified amendments to the terms of use and/or regulations on data protection in due time, the previous terms of use and/or regulations on data protection shall remain in force.

15.5 Should any provision of this contract be (or become) invalid/void or unenforceable in whole (or in part) for reasons relating to the law governing the General Terms and Conditions of Business pursuant to Sections 305 to 310 German Civil Code (BGB), statutory provisions shall apply.

If any present (or future) provision of the contract is (or becomes) invalid/void (or unenforceable) in whole (or in part) for reasons other than the provisions relating to the law governing the General Terms and Conditions of Business pursuant to Sections 305 to 310 German Civil Code (BGB), this shall not affect the validity of the remaining provisions of this contract, unless the performance of the contract – including taking into account the following provisions – would constitute an unreasonable hardship for one party (Section 306 III German Civil Code [BGB]). The same shall apply if a loophole arises subsequent to the conclusion of contract, which requires supplementation.

Contrary to a possible principle – according to which a severability preservation clause is, essentially, only intended to reverse the burden of proof – the validity of the remaining provisions of the contract shall be maintained under all circumstances and, thus, Section 139 German Civil Code (BGB) is hereby waived altogether.

The parties shall replace the invalid/void/unenforceable provision or loophole requiring supplementation for reasons other than the provisions concerning the law of the General Terms and Conditions pursuant to Sections 305 to 310 German Civil Code (BGB) with a valid provision, which corresponds – in its legal and economic content – to the invalid/void/unenforceable provision and to the overall purpose of the contract. Section 139 German Civil Code (BGB) (partial invalidity) is expressly excluded. If the invalidity of a provision is based on a measure of performance or time (period or date) stipulated therein, the provision shall be reconciled with a legally permissible measure that comes closest to the original measure.

Notice:
In accordance with the provisions of the Data Protection Act, we would like to point out that the processing of contracts in our company is carried out by means of an EDP system and that, in this context, we shall also store the data received on the basis of the business relationship with the customer.

Hilden, February 2021