

# General Conditions of Installation

**2021**

## 1. Scope of application

These General Conditions of Installation ("Conditions") apply to the installation or installation supervision, commissioning and test operation ("Services") of machinery and installations ("Installations").

## 2. General provisions

- 2.1. The contract shall be deemed concluded upon signature, receipt of the written confirmation of the Contractor's acceptance of the order ("Order Confirmation") or upon receipt of the Services by the Customer, provided, in particular, that the necessary official permits have been issued and the agreed payment guarantees have been provided. Offers that do not stipulate a deadline for acceptance shall be binding for a period of 10 days from the date of submission by the Contractor.
- 2.2. These Conditions shall be binding if they are declared to be applicable in the offer or in the Order Confirmation. Any deviating terms and conditions of the Customer shall be valid only if they have been expressly approved in writing and in advance by the Contractor.
- 2.3. In the event of inconsistencies, the individual agreements in a written contract, or in the Order Confirmation, shall take precedence over these Conditions and any other contractual components.
- 2.4. All contractual amendments, agreements and legally relevant declarations of the Parties must be executed in writing in order to be valid. This written form requirement may only be waived in writing. Declarations in text form that are transmitted or recorded using electronic media shall be deemed equivalent to written form if the Parties have specifically agreed to this.
- 2.5. Should any provision of these Conditions prove to be invalid, in whole or in part, the Parties shall replace such a provision with a new agreement that comes as close as possible to achieving the intended legal and economic effect of the invalid provision.

## 3. Scope of Services, Contract

The scope of the Services is defined conclusively in the written contract for Services, the Order Confirmation of the Contractor, including any annexes thereto, or the work report drawn up by the Contractor's personnel ("Contract").

## 4. Plans, technical documents and software

- 4.1. Information contained in plans, drawings, and technical documents, or data contained in software, etc. shall only be binding insofar as they form an integral part of the Contract.
- 4.2. Each Party shall retain its rights to the information used in connection with providing the Services such as, inter alia, plans, drawings, technical documentation or software. The Parties acknowledge these rights and shall not make the information available, in whole or in part, to third parties or use it for any purpose other

than the agreed purpose without the prior written authorisation of the other Party.

- 4.3. If the Services also include software, the Customer shall be granted, unless otherwise agreed in writing, a nonexclusive and nontransferable licence to use the software for the agreed purpose. The Customer shall not have the right to make copies (except for archiving purposes, troubleshooting or for replacement of defective data carriers) or to make alterations to the software. In particular, the Customer may not disassemble, decompile, decrypt or reverse engineer the software without the prior written consent of the Contractor. The Contractor may revoke the licence in the event of a breach of the above provisions. Any thirdparty software shall be subject to the terms and conditions of use stipulated by the licensor, which may assert claims in addition to those of the Contractor in the event of a breach.

## 5. Rights and obligations of the Customer

- 5.1. The Customer shall be responsible for obtaining, in a timely manner, the necessary entry and exit, residence and work permits, and all other permits, for the personnel of the Contractor, as well as the permits required for the import and export of tools, equipment, measuring and testing devices, and materials, and shall furthermore ensure that these are maintained until completion of the Services. The Parties shall agree on who shall bear the costs of obtaining such permits.
- 5.2. The Customer shall carry out the onsite and other preparatory work in a professional manner, in accordance with the documents provided by the Contractor where applicable. He shall do everything necessary to ensure that the Services can be commenced in a timely manner and provided without hindrance or interruption.
- 5.3. The Customer shall ensure that the transport routes to the installation site are in usable condition, that access to the installation site is guaranteed, that all necessary pedestrian and vehicular rights of way are assured and that the installation site is in a workready and safe condition.
- 5.4. The Customer shall, by the date of placing the order at the latest, inform the Contractor in writing of the regulations and standards relating to the provision of the Services, the operation of the Installations or the prevention of illnesses and accidents. If special consideration must be given to the Customer or third parties when providing the Services, the Customer must draw this to the Contractor's attention. In the absence of any agreement, the Services must be compliant with the regulations and standards in force in the place where the Contractor has his registered office.
- 5.5. The Customer shall be responsible for taking all measures necessary to prevent illnesses and accidents. If the Customer fails to take such measures and the safety of the personnel is not guaranteed, the Contractor may, at any time, refuse to provide the Services, or discontinue them, and order the return of the personnel. The Contractor shall also be entitled to do so if, for other

reasons, the safety or health of the personnel is not guaranteed. If the personnel suffers an accident or illness, the Customer shall provide the necessary assistance. Subject to Clause 10.3.7, the Contractor shall not be liable for any additional costs resulting therefrom.

- 5.6. For the duration of provision of the Services, the Customer shall provide heating and/or airconditioned and lockable work rooms, lounges and changing rooms for the personnel, as well as appropriate sanitary facilities. He shall also provide lockable, dry rooms for the storage of tools, equipment and materials. All of these rooms should, if possible, be located in the immediate vicinity of the installation site.
- 5.7. The Customer shall store the materials and spare parts intended for installation in accordance with the Contractor's instructions in a safe place that is protected from harmful factors. Prior to provision of the Services, the materials and the spare parts shall be inspected, by the Customer in the presence of the Contractor, for completeness and damage, and the findings must be recorded accordingly in writing. Materials or spare parts that have been lost or damaged shall be replaced or repaired by the Customer or, at the latter's request, by the Contractor at the Customer's expense.
- 5.8. The Customer shall provide the following services at his own expense in accordance with the specifications of the Contractor:
- provision of qualified professional personnel and auxiliary personnel, together with the necessary tools and equipment. Such workers shall comply with the work instructions issued by the Contractor's personnel; doing so shall not, under any circumstances, establish any employment or other legal relationship with the Contractor;
  - provision of operational cranes and lifting equipment together with operating personnel, appropriate scaffolding and means of transport for the transportation of personnel and materials, corresponding workshop equipment and measuring equipment;
  - provision of the necessary consumables and installation materials, cleaning materials and lubricants as well as incidental items;
  - provision of the necessary electrical power and lighting (including the connections necessary to reach the installation site), heating, compressed air, water, steam, and operating materials;
  - provision of adequate means of communication, which must, as a minimum, include telephone and internet connections;
  - provision of the software required by the Contractor.
- 5.9. The Customer shall assign the intended operating personnel to collaborate in the assembly of the Installations in order for them to become familiar with it.
- 5.10. The Customer shall be liable for any damage caused by his personnel. This shall apply even if the Contractor's personnel are in charge of or supervising the work, unless it can be proven that the damage was caused by gross negligence on the part of the Contractor's personnel in issuing instructions or supervising the work.
- The Customer shall be liable for any damage caused by materials, spare parts, tools, equipment and other auxiliary materials that he has provided. This shall apply even if the Contractor's personnel used them without any objection.

- 5.11. The Customer shall fulfil his obligations in a timely, correct manner and at no cost to the Contractor. If the Customer fails to fulfil his obligations, or fulfils them only in part, the Contractor shall be entitled, after setting a grace period in writing (except in cases of urgency), and at the cost and risk of the Customer, to fulfil them itself, where possible, or to arrange for them to be fulfilled by third parties, or to terminate the Contract after the grace period has expired without effect, and to claim compensation for the loss resulting from the cancellation of the Contract (including lost profits). The Customer shall indemnify the Contractor against third-party claims and hold him fully harmless.

## **6. Rights and obligations of the Contractor**

- 6.1. The Contractor undertakes to provide the Services professionally using qualified personnel or to arrange for them to be provided by third parties acting as subcontractors.
- 6.2. If the Contractor's personnel are significantly impeded in their provision of the Services due to reasons for which the Contractor is not responsible, the Contractor shall be entitled to order the personnel to return. In such cases, as well as in the event that personnel are detained after the Services have been provided, the waiting time shall be invoiced to the Customer as working time charged at the relevant rates, together with the travel costs plus daily allowances. The Contractor shall not be liable for any resulting additional costs.
- 6.3. The Contractor shall be entitled to carry out a risk assessment and safety inspection before starting to provide the Services, and to refuse or suspend provision of the Services at any time if the safety of the personnel is not guaranteed, or if the Customer fails to comply with his obligations. Clause 5.11 shall apply by analogy to the pecuniary consequences of suspending the Services.
- 6.4. The Contractor shall prepare a work report for the Customer in relation to the Services performed.

## **7. Warning notices**

Express statements made by the Contractor's personnel to the Customer concerning the condition, use, safety or usability of the Installations, as well as express reservations expressed by the Contractor's personnel with regard to orders, instructions or actions of the Customer, or with regard to actual circumstances, may be made in writing or verbally and shall be deemed to be a warning by the Contractor that releases the Contractor from any liability.

## **8. Working hours**

- 8.1. Subject to any mandatory statutory provisions to the contrary that are applicable at the installation site, the normal weekly and daily working hours are stipulated in the Contract or its components.
- 8.2. The normal weekly working hours are to be allocated over 5 working days. If, for reasons beyond the control of the Contractor, shorter working hours must be observed, the normal working hours shall nevertheless be invoiced.
- 8.3. When allocating working hours, the Contractor's personnel shall conform to the operational circumstances of the Customer and the local conditions. The normal daily working hours are between 06:00 and 23:00.
- 8.4. Hours worked in excess of normal weekly or daily working hours shall be deemed overtime work.

- 8.5. Overtime work is only permitted by mutual agreement. As a general rule, overtime work should not exceed the daily working time by more than 2 hours nor should it exceed the normal weekly working time by more than 10 hours.
- 8.6. Night work on working days is deemed to be working hours between 23:00 and 06:00 (excluding overtime night work). Overtime night work means hours worked in excess of the normal daily working hours between 23:00 and 06:00.
- 8.7. Sunday work means work performed on Sundays or on the weekly rest days applicable at the installation site. Public holiday work means work performed on the statutory public holidays applicable at the installation site.

## 9. Travel time and other periods treated as working hours

- 9.1. Travel time as well as a reasonable assignment-dependent period for preparation and for attending to post-arrival matters after the trip shall be deemed working time according to Clause 8.

Travel time is defined as:

- the time spent on the outbound and return journey to and from the installation site;
- the time for checking into accommodation at the installation site as well as for dealing with official registration and deregistration formalities.

- 9.2. If there is no suitable accommodation and/or catering services in the vicinity of the installation site, the daily time required for the journey between the accommodation site, and/or the catering site, and the installation site that exceeds half an hour for the oneway journey (travel time), shall be invoiced as working time.

The Parties shall agree upon who is to bear the expenses related to the above, as well as the costs for using reasonable means of transport or a hire car.

- 9.3. If the Contractor's personnel are impeded in the provision of the Services for reasons beyond the control of the Contractor, or are detained for any reason after completion of the Services, the Contractor shall be entitled to invoice for the waiting time as working hours. The same shall apply to other downtimes for which the Contractor is not responsible.

All other costs related to the above shall be borne by the Customer insofar as the waiting time or downtime is attributable to fault on the part of the Customer. In all other cases, the Parties shall agree upon who is to bear the costs.

## 10. Pricing

- 10.1. General principle

The Services shall be invoiced on the basis of the agreed hourly rates, unless a lump sum has been agreed upon. This shall also apply, in particular, to technical documents to be prepared in connection with the Contract, inspection reports, expert opinions, evaluations of measurements, etc.

Unless otherwise agreed in writing, all prices are net, in freely disposable Swiss francs, without any deductions.

- 10.2. Costs, taxes, duties, charges, social security contributions

The Parties shall agree upon who is to bear the collective or individual costs for, by way of example, freight,

insurance, customs duties, authentications, export, transit, import and other permits, as well as for taxes (except VAT), duties, charges, social security contributions and other similar charges which the Contractor or his personnel must pay in connection with the Contract or its performance, particularly in connection with Services outside Switzerland, including the associated administrative costs. The Contractor's profit tax shall be paid by the Contractor. Value Added Tax (VAT) shall be stated separately and shall be paid by the Customer.

Insofar as any such costs and taxes or similar charges are levied on a Party, or administrative costs are incurred, and these are to be borne by the other Party pursuant to the agreement, the other Party shall reimburse such costs and taxes or similar charges within 30 days of presentation of a copy of the relevant documents.

- 10.3. Work performed on a time and materials basis

The Services shall be invoiced as follows:

- 10.3.1. Personnel costs

The Customer shall sign the work report prepared by the Contractor's personnel in accordance with Clause 6.4. If the Customer fails to sign the work report without justification or does not do so in a timely manner, the records of the Contractor's personnel shall be used as the basis for invoicing.

The agreed hourly rates shall apply to the hours worked, overtime work, night work, overtime night work, Sunday and public holiday work, travel time and other times treated as working time. In the absence of such an agreement, they shall be based on the usual rates charged by the Contractor.

If work is to be carried out under difficult conditions, e.g. at high altitudes or great depths, or if protective suits or respiratory protective devices have to be worn, the Parties shall agree upon the amount of the surcharge, if any, to be charged in addition to the applicable rates.

- 10.3.2. Travel costs

The Parties shall agree upon who is to bear the costs for the outbound and return journey to and from the installation site, as well as for travel within the country of deployment by means of transport to be chosen by the Contractor, including the necessary ancillary costs, such as for insurance, freight, customs duties, luggage, passport and visa fees, issuance of entry, residence and work permits and all other permits necessary for the Contractor's personnel, any medical examinations required for outbound and return journeys, and any vaccinations needed by the Contractor's personnel.

The choice of the comfort class for the means of transport shall be agreed upon separately. In the absence of any agreement, the rules that the Contractor has specified for his personnel shall apply.

- 10.3.3. Accommodation expenses (daily allowance rates)

The Customer shall ensure that Contractor's personnel are provided with proper and sufficient meals, as well as decent, heated and/or airconditioned, and lockable individual accommodation at the installation site or in its immediate vicinity. The meals and accommodation must, as a minimum, conform to the European middle class standard.

The Parties shall agree upon who is to bear the costs for the meals and accommodation, as well as the an-

cillary costs such as drinks and laundry. If the Customer agrees to assume these costs, the agreed daily allowance rates shall be invoiced.

The Parties shall agree upon a maximum increase to the daily allowance rates that is to be applied if, in particular, the costs of living should increase prior to the start of, or during, the provision of the Services, or if the daily allowance rates should, for other reasons, prove insufficient.

The Customer may, with the prior written consent of the Contractor, pay the daily allowance directly to the Contractor's personnel.

#### 10.3.4. Home leave

The right to home leave shall be determined by the regulations in force in the place where the Contractor has his registered office. In the absence of such regulations, the Parties shall agree upon on the length of absence that shall give rise to a right to home leave and on how the time and expenses, particularly travel expenses and time spent on the outbound and return journeys, shall be apportioned between the Parties.

#### 10.3.5. Costs for tools and equipment

The Contractor shall provide his personnel with the usual hand tools required for the provision of the Services, the use of which is included in the personnel costs provided for in Clause 10.3.1. The use of other tools, equipment, measuring and testing devices, and materials shall be remunerated in accordance with the rates agreed for this purpose.

The Customer may not withhold tools and equipment, measuring and testing devices, or materials.

The Parties shall agree upon who is to bear the transport and insurance costs, as well as all expenses, duties and charges arising in connection with, in particular, the import and export of tools and equipment, measuring and testing devices, and materials.

#### 10.3.6. Costs of consumables and installation materials

Unless otherwise agreed, consumables and installation and assembly materials supplied by the Contractor shall be invoiced for on a time and materials basis.

#### 10.3.7. Costs in the event of accident or illness

In the event of accident or illness afflicting the personnel of the Contractor, the Customer guarantees the necessary professional medical treatment and care; this shall not affect the right of the Contractor to order the return of the personnel concerned at any time. The Contractor shall bear all medical costs.

In the event of accident or illness afflicting the Contractor's personnel, the daily allowance rates shall be paid by the Party that has agreed to do so in accordance with Clause 10.3.3, for as long as the personnel concerned remains on site. If the recovery of the sick or injured personnel is likely to be of long duration, the Contractor shall arrange, at his own expense, for the personnel concerned to be replaced by an equivalent personnel.

#### 10.4. Work performed for a lump sum

##### 10.4.1. The lump sum is paid in full consideration for the Services agreed to in writing that are to be provided by the Contractor.

If the Customer has not performed the preparatory work or services that he is required to perform in a timely manner, or has failed to perform them properly, the Contractor shall be entitled to receive compensation for

the additional costs on a time and materials basis. The Contractor shall also be entitled to receive such compensation if the Contractor's personnel are impeded in their performance of the Services, or are detained for any reason after completion of the Services.

##### 10.4.2. All other costs incurred by the Contractor as a result of circumstances beyond his control, such as, inter alia, subsequent changes to the agreed Services, waiting times, downtimes, reworking or travel, shall be borne by the Customer and shall also be invoiced for on a time and materials basis.

### 11. Payment terms

#### 11.1. Payments shall be made by the Customer at the domicile of the Contractor, net, without any deductions for discounts, expenses, taxes, levies, charges, customs duties, or similar charges or reductions.

The price and costs shall be invoiced on a monthly basis. Insofar as specifically agreed, the Contractor shall be entitled to demand an advance payment or other security (e.g. a bank guarantee) in the agreed amount.

The payment obligation shall be deemed fulfilled if the Contractor has made freely disposable Swiss francs, or the agreed foreign currency, available at his place of domicile.

#### 11.2. The Customer may not withhold, reduce or offset payments on the basis of complaints, claims, or counterclaims that have not been recognised in writing by the Contractor. Payments must also be made on time even if performance of the Services is delayed or rendered impossible for reasons for which the Contractor is not responsible.

#### 11.3. If the advance payment or the securities to be provided are not paid or provided in accordance with the Contract, the Contractor shall be entitled to adhere to the Contract or terminate the Contract and, in either case, to claim damages, including compensation for lost profits.

If the Customer is in arrears with a payment for any reason, or if the Contractor has serious grounds for concern that, due to a circumstance occurring after the conclusion of the Contract, the payments of the Customer will not be received in full or on time, the Contractor shall be entitled, without prejudice to his other claims, to suspend further performance of the Contract until new payment and performance conditions have been agreed and the Contractor has received sufficient security. If such an agreement cannot be concluded within a reasonable period of time, or if the Contractor does not receive sufficient security, the Contractor shall be entitled to terminate the Contract and to demand compensation for damages, including compensation for lost profits.

#### 11.4. If the agreed payment deadlines are exceeded, default interest shall be payable without any special reminder and without prejudice to the right to assert further claims; in this respect, the interest rate shall be based on the usual interest rates applicable at the Contractor's place of domicile, but shall not amount to less than 5% per year. The obligation to effect payment in accordance with the terms of the Contract shall remain in effect.

### 12. Implementation period

#### 12.1. In order to be binding, an implementation period must be specified in a corresponding written agreement that stipulates, in particular, the scope of the Services. The

implementation period shall begin as soon as, in the opinion of the Contractor, all of the prerequisites for the provision of the Services have been fulfilled.

- 12.2. The implementation period shall be deemed to have been complied with if, upon its expiry, the Installations are ready for operation in accordance with their intended purpose. The foregoing shall also apply even if individual parts of the Installations or the documentation are still lacking, or if individual reworking of the same still needs to be carried out.
- 12.3. Compliance with the implementation period is subject to the precondition that all of the Customer's contractual and noncontractual obligations towards the Contractor have been fulfilled.
- 12.4. The Parties shall agree upon an appropriate extension to the implementation period that takes account of the circumstances if:
- a) the Contractor does not receive the information necessary for him to provide the Services in a timely manner, or if the Customer subsequently makes changes to the information; or
  - b) the Customer fails to comply with his obligations under the Contract, particularly the obligations set forth in Clause 5, or fails to comply with the payment obligations set forth in Clause 11; or fails to do so timeously; or
  - c) obstacles arise that the Contractor is unable to avert despite exercising due care (force majeure), irrespective of whether they affect the Contractor, the Customer, or a third party. Such obstacles include, by way of example, epidemics, pandemics, mobilisation, war, civil war, terrorist acts, riots, political unrest, revolutions, sabotage, significant operational disruptions, accidents, labour disputes, late or incorrect deliveries of the necessary materials, actions or omissions by authorities, state or supranational bodies, travel advice issued by authorities, embargoes, unforeseeable transport hindrances, fire, explosions, or natural disasters; or
  - d) other circumstances arise for which the Contractor is not responsible.
- 12.5. If the Contractor fails to comply with the implementation period for reasons for which he is demonstrably at fault, the Customer shall be entitled to claim compensation for delayed performance insofar as he has suffered a loss. The Parties shall agree upon the amount of the compensation for delayed performance, as well as the maximum amount of compensation for delayed performance. If compensation for delayed performance is agreed as a percentage for each fully completed week, and as a percentage for the maximum compensation for delayed performance, then the basis for calculating the compensation for delayed performance shall be the price for the Services for the part of the Installations that cannot be put into service on time as a result of the delay.

After the maximum compensation amount for delayed performance has been reached, the Customer shall set a reasonable grace period for the Contractor in writing. If the Contractor fails to comply with this grace period due to reasons for which he is at fault, the Customer may refuse to accept the delayed part of the Services, terminate the Contract in respect of that part, and demand reimbursement of any payments already made in respect of the Services affected by the termination.

12.6. If a specific date is agreed instead of an implementation period, this date shall correspond to the last day of an implementation period. Clauses 12.1. to 12.7. shall apply by analogy.

12.7. The Customer shall have no further claims or rights based on delayed performance of the Services other than those expressly specified in this Clause 12. This limitation shall not apply in cases of unlawful intent or gross negligence on the part of the Contractor.

### **13. Assumption of risk**

The Customer shall bear the risk of accidental damage to, or accidental loss of, the Installations as well as the materials, spare parts, tools, equipment and all other auxiliary materials provided by him. The Contractor may claim payment of the agreed lump sum even if the Services cannot be provided, or can be provided only in part, as a consequence of damage to or loss of the Installations.

### **14. Acceptance of Services**

14.1. The Services shall be deemed ready for acceptance if the Installations are ready for operation in accordance with their intended purpose. The Services shall also be deemed ready for acceptance if individual parts of the Installations or documentation are still lacking, or if reworking of the same still needs to be carried out, or if the Installations cannot be put into service due to reasons for which the Contractor is not responsible.

14.2. As soon as the Contractor has informed the Customer that the Services are ready for acceptance, the Customer shall inspect them in the presence of a representative of the Contractor. A written acceptance report shall be drawn up, which must be signed by both Parties. Any defects must be recorded by the Customer in the report. If the Customer fails to do so, acceptance of the Services shall be deemed to have taken place and the Services shall be deemed to have been approved. Minor defects shall not entitle the Customer to refuse acceptance of the Services.

14.3. Acceptance shall also be deemed to have taken place:

- if acceptance does not take place on the scheduled date for reasons for which the Contractor is not responsible; or
- if the Customer refuses to sign an acceptance report; or
- as soon as the Customer puts the Installations into service; or
- if the Customer refuses acceptance without being entitled to do so.

14.4. Insofar as the Contractor is responsible for the defects identified at the time of acceptance, he shall rectify the defects as quickly as possible. The Customer must give the Contractor sufficient opportunity to do so. Clause 14.2 shall apply by analogy to acceptance of the work carried out to remedy the defects.

14.5. The Customer's claims arising out of, or in connection with, defects in the Services are expressly and conclusively governed by this Clause 14. Any other or more extensive claims are hereby excluded. This limitation of liability shall not apply in the event of gross negligence or unlawful intent on the part of the Contractor.

## 15. Warranty, liability for defects

- 15.1. The Parties shall agree upon the period during which the warranty for the professional and careful provision of the Services shall be valid following their acceptance.

If acceptance of the Services is delayed for reasons for which the Contractor is not responsible, the warranty period shall end, at the latest, upon expiry of a period to be agreed by the Parties following completion of the Services.

- 15.2. If, prior to expiry of the warranty period, it should demonstrably be proven that the Services have not been performed professionally and carefully, the Contractor shall, at the written request of the Customer, remedy the Services in question within a reasonable period, provided that the Customer has, during the warranty period, given the Contractor written notice of the defects immediately after their discovery and the defects were not already apparent at the time of acceptance. The Contractor shall bear the costs incurred by him for remedying the defects.
- 15.3. The Contractor provides a corresponding warranty for services provided by the personnel of the Customer only insofar as it can demonstrably be proven that the defects were caused through gross negligence on the part of his personnel in issuing instructions or supervising the services.
- 15.4. For services of subcontractors that are prescribed by the Customer, the Contractor gives the warranty exclusively within the scope of the warranty obligations of the subcontractor concerned.
- 15.5. The warranty claims of the Customer are expressly and conclusively governed by this Clause 15. Any other or more extensive claims are hereby excluded. This limitation of liability shall not apply in the event of gross negligence or unlawful intent on the part of the Contractor.
- 15.6. In cases of poor advice and similar deficiencies, or in the event of a breach of any ancillary obligations, the Contractor shall be liable to the Customer only in the event of gross negligence or unlawful intent.

## 16. Improper contract performance

- 16.1. In all cases of improper contractual performance not expressly governed by these Conditions, the Customer shall set the Contractor a reasonable grace period.

If this grace period expires without effect and the Contractor is at fault for this, the Customer shall be entitled to terminate the Contract in respect of those Services that have been provided in breach of contract, or in respect of which it is expected with certainty that they will not be provided in a contractually compliant manner. In such case, the Contractor shall only be obliged to reimburse the price paid to him for those parts of the Services affected by the termination of the Contract.

- 16.2. In the event of a termination by the Customer in accordance with Clause 16.1, Clause 20 shall apply by analogy with regard to the Contractor's liability.

## 17. Contract adjustments and termination of the Contract

If unforeseen events significantly change the economic value or subject matter of the Contract, or have a significant impact on the Contractor's Services, or in the event of subsequent impossibility (in whole or in

part), the Contract shall be adjusted appropriately by the Parties.

If, for unforeseeable reasons, provision of the Services has become economically unreasonable for the Contractor, he shall be entitled to terminate the Contract, or the affected parts of the Contract, provided that he informs the Customer of this without delay upon becoming aware of the consequences of the events. This shall also apply even if an extension to the implementation period is agreed upon in the first instance.

If the Contract is terminated, the Contractor shall be entitled to remuneration for the Services already provided. The Customer shall not be entitled to claim damages.

## 18. Export control

The Customer acknowledges that the Services are subject to Swiss and/or foreign statutory provisions and regulations governing export controls, that they may be subject to official licensing requirements, and that an enduse certificate may be required. This may mean that, if no export or reexport licence is obtained from the competent authorities, goods, software, technologies (technical data) etc. may not be exported or used for any purposes other than those agreed. The Customer undertakes to abide by such laws and regulations. He acknowledges that these may be subject to change and that they apply to the Contract in the current valid wording.

The Services shall not be used, whether directly or indirectly, in any way that is connected with the design, manufacture, use, or storage of chemical, biological or nuclear weapons or their delivery systems.

## 19. Data protection

- 19.1. The Parties agree that the Customer is the data controller who shall be responsible for ensuring compliance with applicable data protection laws including, in particular, the lawfulness of personal data processing. The Contractor processes personal data on behalf of the Customer and gives a guarantee only in respect of those obligations under the applicable data protection laws that are expressly directed at processors; the Contractor shall act in accordance with the Customer's instructions.
- 19.2. The employees of the Parties involved in the processing of personal data are aware of the confidential nature of the personal data, have received appropriate instructions regarding their obligations, and have signed written confidentiality agreements.
- 19.3. The Customer hereby agrees that he will not refuse or delay his consent to any changes to this data protection clause and/or to any additional data processing or data protection agreements and their application to the Services provided by the Contractor from time to time. This applies in particular to such changes that the Contractor reasonably deems necessary for compliance with applicable data protection laws and regulations and/or guidelines issued by a competent supervisory authority.

## 20. Exclusion of further liability on the part of the Contractor

All cases of breach of contract and their legal consequences as well as all claims of the Customer, irrespective of their legal basis, are exhaustively governed by these Conditions. In the event of any claims of the Customer arising out of, or in connection with, the Con-

tract, or its improper performance, the total amount of such claims shall be limited to the price paid by the Customer. In particular, any and all claims for compensation for damages not expressly mentioned shall be excluded; this includes, in particular, claims for damages on the grounds of, by way of example, loss of production, loss of use, loss of orders, recall costs, loss of profit and any other direct or indirect or consequential damages, as well as the rights to a reduction of the price, rescission of the Contract or termination of the Contract.

In addition, liability for compensation in respect of third party claims brought against the Customer on the grounds of infringements of intellectual property rights is also excluded.

This exclusion of further liability on the part of the Contractor shall not apply to unlawful intent or gross negligence on the part of the Contractor, or if this is contrary to mandatory law.

## **21. Right of recourse of the Contractor**

If personal injury or damage to the property of third parties occurs through actions or omissions of the Customer or of persons employed or appointed by him to perform any of his obligations, and if a claim is made against the Contractor, then the latter shall have a right of recourse against the Customer.

## **22. Jurisdiction and applicable law**

- 22.1. **The place of jurisdiction for both the Customer and the Contractor shall be at the place where the Contractor has his registered office.** However, the Contractor shall be entitled to sue the Customer at the place where the latter has his registered office.
- 22.2. The Contract is subject to substantive Swiss law. The provisions of the United Nations Convention of 11 April 1980 on Contracts for the International Sale of Goods shall not apply.