

# Terms and Conditions

for Technical After-Sales Service  
of AVENTICS GmbH Marine Sector

Service from Laatzen, Germany  
Version August 2016

## **I. Validity**

These terms and conditions apply for all services carried out by the staff of the technical after-sales service Marine.

Any collateral agreement or alteration of these Terms and Conditions needs to be approved in writing by the Aventics GmbH.

## **II. Order for after-sales personnel**

An order for after-sales personnel should be placed at least 14 days before the beginning of the work and include the estimated duration of the service.

## **III. Price calculation**

The costs for after-sales service are calculated following the rates of remuneration in annexure 1

- based on the time needed for service in Germany,
- based on a daily rate for system commissionings and service abroad.

## **IV. Liability of the Aventics GmbH**

### **Delays**

If the after-sales service personnel does not carry out the work within the time agreed upon, due to reasons for which Aventics is responsible, the Customer has the right to withdraw from the part of the order that has not been executed so far, after expiration of a reasonable period of grace fixed by the Customer.

Further-reaching claims, especially to compensate consequential damage, are excluded. This exclusion from the liability will not apply, if the defect is due to wilful misconduct or gross negligence of a legal representative or business manager of Aventics.

### **Warranty**

After-sales services that have been performed imperfectly will be corrected by Aventics with adequate measures and within a reasonable delay, if Aventics is notified about the fault within 12 months after the end of the service.

If a period of grace fixed by the Customer expires fruitlessly due to reasons for which Aventics is responsible, the Customer is entitled to a reduction. This right of reduction will also apply in other cases if the defects can not be removed successfully. Only if the Customer can prove that the work performed is without interest to the Customer in spite of the reduction, the Customer may terminate the contract after previous notice.

Further-reaching claims in case of defects are excluded; this applies especially for contractual and non-contractual claims of damages. This exclusion from the liability will not apply, if the defect is due to wilful misconduct or gross negligence of a legal representative or business manager of Aventics.

## **V. Safety regulations, work conditions**

The Customer must provide a safe workplace with adequate working conditions and is responsible for the observance of existing safety regulations. The after-sales personnel in charge must point out to the Customer any danger that might arise as a consequence of the assembly work.

## **VI. Liability of the customer**

If devices, tools and measuring instruments provided by Aventics are damaged or lost at the assembly place and Aventics is not responsible for it, the Customer must compensate the damage. Defects that are due to natural wear are not considered.

## **VII. Additional work**

The after-sales personnel is not obliged to carry out work exceeding the order volume agreed upon.

However, if, after agreement with the Customer, service is carried out which exceeds the original order volume, the Customer will have to bear the costs.

## **VIII. Replacement of after-sales personnel**

For reasons of quality and safety we reserve the right to replace our personnel after 20 work days. The costs arising by this will be charged. If, during the 20 work days, the working time as stipulated in the labor agreement is exceeded, Aventics has the right to shorten that period accordingly or to bring in extra personnel for change on a daily basis.

Should it be necessary to replace the personnel at site, due to reasons for which Aventics is not responsible, the Customer has to bear the costs arising.

## **IX. Travel expenses**

The travel expenses will be charged for the after-sales personnel according to the rates stated in the enclosure.

The costs for returns to the family during the service, agreed upon in the collective bargaining agreement, and those for journeys between accommodation and work site, if the distance is considerable, belong also to the travel expenses.

The costs for the transport and the transport insurance of personal luggage and tools brought by the personnel or dispatched separately will be invoiced as incurred.

For travels by car the rates as per annexure 2 will be charged.

For air travels economy class will be used. Exceptionally, business class can be booked if economy class, subject to the airlines fare conditions, is unavailable or, in case of long distance flights, the flight time without interruption exceeds 8 hours.

Daily rates and accommodation costs will be charged even if after-sales personnel is temporarily unable to work due to illness or accident.

If the Customer wants to offer free accommodation or meals, this will be subject to prior agreement. In case of free meals, the contract partners must agree upon adjusting the daily rate accordingly.

## **X. Working time and payment**

The resulting work time will be invoiced including social charges following the hourly and daily rates listed in the respective valid version of annexure 1.

The after-sales personnel will adapt, as far as possible, to the Customers' working time. The after-sales service personnel will be chosen by Aventics.

If there is no other agreement about the working time, the following regulation will apply:

- From Monday to Friday, the working time of currently 7 hours as fixed in the collective bargaining agreement valid at the time of the order. If required, up to 3 additional working hours per day are permitted.
- For system commissionings and services abroad, the daily working time is up to 10 hours.
- Working times exceeding 10 hours as well as work on Sundays and public holidays need to be approved by Aventics before. For the permission, the Customer must prove in writing that the case is exceptional in accordance with § 14 of the Arbeitszeitgesetz (German Working Time Regulations).

The Customer must support the service personnel during the performance of mounting and service works at his expense and grant full industrial security as for the Customer's own personnel.

If the Customer provides auxiliary staff or if third companies are charged with installation work etc. in connection with the set-up of the system, those persons will not be supervised by Aventics after-sales personnel.

The Customer must certify by signature the working hours and performance of the after-sales personnel on the form submitted (Record of Hours Worked, enclosure 3). Based on the signed Record of Hours Worked, Aventics will make out the invoice.

Later objections to the correctness of the invoiced and certified working hours can not be accepted. If it is not possible to certify the *Record of Hours Worked*, the invoice will be made out according to the performance defined in the order and the costs recorded by Aventics.

Waiting times or standby times of the after-sales personnel between Monday and Sunday will be invoiced as working hours if the work is interrupted due to reasons for which Aventics is not responsible.

## **XI. Costs for tools and material**

The Customer provides at his own expense adequate room for material, devices, tools and measuring instruments to be delivered by Aventics and dry, heatable, lockable and lightable room for the stay of the after-sales personnel. Furthermore, the Customer has to provide operating funds such as electricity.

In addition, the Customer must insure the material, devices, tools and measuring instruments supplied by Aventics on the assembly site against fire, explosion, theft, water and storm damage and other exceptional occurrences.

The transport of the material, tools and devices to the assembly site and back as well as costs for a possible storage must also be paid by the Customer.

Finally, rents for special tools, welding sets, erection and lifting devices, payable to third parties, will be invoiced to the Customer.

Materials used at the work site such as devices, spare parts, tubes, joints, mounting material and wearing parts will be invoiced subject to delivery notes signed by the Customer (enclosure 4 – *Consumption of Materials*).

For the project-specific preadjustment of replacement devices without software a fee of EUR 250.00 will be invoiced in addition to the component price.

For the project-specific programming and parameterization of replacement devices with software EUR 500.00 will be invoiced in addition to the component price.

## **XII. Additional regulations**

Invoices are payable immediately after receipt without any deduction. Holding back payments or setting off against cross claims is only allowed, if the cross claims are uncontested or have been confirmed by non-appealable judgement.

Invoicing will be made weekly, monthly or after the end of the service, at Aventics discretion.

The prices stated will be calculated net, plus the VAT rate valid at the time of the order.

If after-sales personnel can not be sent at the date confirmed due to strike, lockout actions or circumstances beyond Aventics control, Aventics will perform the work agreed upon after the unfavourable circumstances have ended.

For material sold by the after-sales service personnel, only the "*General Terms and Conditions for Supplies and Services*", as stated in enclosure 5, are valid.

## **XIII. Further liability**

Aventics' liability for service is only subject to the above regulations.

Further-reaching claims, especially to compensate consequential damage, are excluded. This exclusion from the liability will not apply, if the defect is due to wilful misconduct or gross negligence of a legal representative or business manager of Aventics.

## **XIV. Ineffectiveness of individual provisions**

Should individual provisions of these conditions become ineffective, the effectiveness of the other provisions remains unaffected.

## ENCLOSURE 1.1

Rates, valid from 01.01. – 31.12.2017

### Work remuneration

For service in Germany

Hourly rate for service at pneumatic or electronic systems: € 110.--

Work characteristics:

- Installation check or advice for pneumatic and electronic components by Aventics including the respective accessory parts.
- Maintenance and repair work.
- Tests of the different devices for function and tightness, necessary after the installation work, as well as fault diagnosis in case of malfunctions.
- Mooring, sea and acceptance trials of ships, excavators, cranes or other machines that are equipped with pneumatic and electronic systems.
- Adjustment and regulation of pneumatic or electronic devices so that they can fulfil the required functions within the systems described above.
- Instruction of the customer on the operation of equipment, systems and components.
- Examination of pneumatic and electronic systems or single devices and record of the results as a basis for the maintenance work.

The following surcharges will be added if incurred:

- a) from the 1<sup>st</sup> to the 3<sup>rd</sup> overtime hour daily .....25 %
- b) for every additional overtime hour daily .....50 %
- c) for night work between 8 p.m. and 6 a.m.....25 %
- d) for work on Sundays between 6 a.m. and 6 a.m. ....50 %
- e) for work on public holidays (basis state Lower Saxony) .....50 %

In addition to the rates above, travel, hotel and food costs will be invoiced according to annexure 2.

## ENCLOSURE 1.2

Rates, valid from 01.01. – 31.12.2017

### Work remuneration

For system commissionings and services abroad

Work characteristics:

- All characteristics apply as stated for Germany, but performed in foreign countries.
- Commissioning of pneumatic, electro- or electronic-pneumatic and electronic systems including trials.

For the above-mentioned services daily rates will be charged. Those rates are based on a working time of up to 10 hours per day in the time between 6 a.m. and 8 p.m.

Daily rates

<u>Monday - Saturday</u>	<u>Sundays and public holidays</u>
€ 1,290	€ 1,840

Hourly rate from the 11<sup>th</sup> hour or for night work between 8 p.m. and 6 a.m.:

<u>Monday - Saturday</u>	<u>Sundays and public holidays</u>
€ 165	€ 220

In addition to the rates stated above, travel, accommodation, food and other expenses will be charged according to annexure 2.

## ENCLOSURE 2

**Rates, valid from 01.01. – 31.12.2017**

### **Rates for travel expenses**

1. Traveling time

For the traveling time, the rates as per annexure 1 apply.

2. Traveling costs

- For travels by car EUR 0.95 per kilometer will be invoiced.
- For travels by train, the costs for a 2<sup>nd</sup> class ticket will be invoiced as incurred.

For flights the ticket fare will be invoiced as incurred.

3. Accommodation

The accommodation costs will be charged to expense.

4. Food in Germany

- For travel days shorter than 12 hours: EUR 12.00
- For travel days over 12 hours: EUR 24.00

5. Food abroad

The costs will be invoiced as incurred.

ENCLOSURE 3

Record of hours worked

**Stundennachweis**  
**Record of hours worked**



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Ulmer Straße 4, 30880 Laatzen  
Tel + 49 511 2136-0  
Fax + 49 511 2136-369  
www.avenics.com  
www.marx-shipcontrols.com

Ihre Bestellung:  
Your order: \_\_\_\_\_

Rechnungsadresse: Charge to:	
Kundennr.:	Customer No.:

Objekt: Object:
Ort: Location:
Art der Arbeit: Job description:

für den Kundendienstinspektor/-ing.  
for customer service inspector/eng. \_\_\_\_\_

Monat Month	Tag Day																			insgesamt total	
Datum Date																					
Arbeitszeit Working time	von from																				
	bis to																				
Tagesatz Daily rate																					
		100%																			
Arbeitsstunden Working hours		125%																			
		150%																			
		...																			
Reisezeit (Std.) Travel time (hrs.)																					
Pausen (Std.) Interval time (hrs.)																					
Gesamtsd./Tag Hrs total/day																					
Erschweriszulagen/Std. Aggravating circumstances/h																					
Tagegeld Daily expenses																					
Übernachtung Accommodation																					
Fahrten an Montageort Drives on the service spot																					km
Hinreise Journey there	ab: depart:																				km
	an: arrival:																				km
Rückreise Journey back	ab: depart:																				km
	an: arrival:																				km
Fahrzeug Car																					x
Auslagen Expenses																					

Unterschrift des Kunden  
Customer's signature

Datum:  
Date:  
Firmenstempel:  
Company stamp:

Unterschrift des Kundendienstes  
Signature customer service



## ENCLOSURE 5

# AVENTICS GMBH

### General Terms and Conditions of Delivery

For use in legal transactions with entrepreneurs, public law legal entities and public law special funds.

#### 1. General Provisions

- 1.1 Only the following Terms and Conditions shall govern our deliveries. Terms and conditions opposing or deviating from our Terms and Conditions shall not apply unless we have expressly approved the application thereof. Separate service conditions shall apply to assembly and repair work. Separate software terms and conditions for the licensing of software shall apply additionally in respect of software supplied by us, even if the software is part of a product supplied by us.
- 1.2 Oral agreements before or at the time when the contract was concluded shall require written confirmation by us to be effective.
- 1.3 If the customer fails to accept our quotation within two weeks of receipt thereof, we shall be entitled to cancel.
- 1.4 Cost estimates are not binding and subject to charge except as otherwise expressly agreed. Measurements, packaging measurement, weights, illustrations, simulation results and drawings are only binding for the construction of the products if this has been expressly confirmed in writing.
- 1.5 These Terms and Conditions shall also govern all future deliveries to the customer pending the entry into effect of our new terms and conditions of delivery.

#### 2. Prices

- 2.1 Invoices shall be calculated on the basis of the list prices in effect on the date of delivery plus value-added tax. Value-added tax will not be charged only in those cases where the conditions have been met for export shipments to be exempted from such tax.
- 2.2 In the absence of any special agreement, prices shall be deemed to be FCA dispatch place at the delivering plant (Incoterms® 2010) excluding packaging.
- 2.3 We reserve the right to adjust our prices appropriately in the event of cost reductions or increases incurred after the contract has been entered into, in particular in case of wage cost changes, for instance due to collective bargaining agreements, or changes in the price of materials. Upon request we shall evidence such changes to the customer.
- 2.4 Spare parts and products which have been repaired shall be shipped against a reasonable flat rate charge for shipping and packaging plus the charge for the service rendered by us, except where this is covered by liability for defects.

#### 3. Delivery, Delivery Dates, Default

- 3.1 The precondition for the commencement of and compliance with delivery dates agreed upon is that the collaboration duties have been performed by the customer, in particular the timely delivery of the entire materials, documentation, approvals, examinations and clearances to be provided by the customer and the compliance with payment terms agreed upon, especially effecting agreed down-payments or opening of a letter of credit. If these preconditions are not duly met in good time, the delivery dates shall be reasonably extended; this shall not apply if the supplier is solely responsible for the delay.
- 3.2 If non-compliance with the delivery date is due to force majeure or to other disturbances beyond our control e.g. war, terrorist attacks, import or export restrictions, including such disturbances affecting subcontractors, the delivery dates agreed upon shall be extended by the period of time of the disturbance. This also applies to industrial action affecting either us or our suppliers.

- 3.3 If we are in default with our delivery, the customer shall declare upon our request and within a reasonable period of time whether it insists upon performance of delivery or asserts its other statutory rights.
- 3.4 In case of delayed delivery, the customer may rescind the contract within the framework of statutory provisions only insofar as we are responsible for the delay.
- 3.5 Clause 9 applies to claims to damages by the customer on account of delayed delivery.
- 3.6 If a customer is in default of acceptance or if a customer culpably violates its collaboration duties, we have the right to demand compensation for the damage incurred by us in this respect including further additional expenditure in an amount of 0.5 % of the price of the products for delivery per month or part thereof but not exceeding, on aggregate, 5 % of the price of the products for delivery. The contracting parties reserve the right to prove higher or lower costs of additional expenditure. The right to raise further claims on account of default of acceptance shall remain unaffected hereby.
- 3.7 Part shipments and corresponding invoices are admissible unless this is an unreasonable hardship for the customer.

#### 4. Transfer of Risk

- 4.1 Delivery is effected FCA dispatch place at the delivering plant (Incoterms® 2010) except as expressly otherwise agreed.
- 4.2 At the customer's request and cost we shall insure shipments against customary transport risks.

#### 5. Complaints and Notification of Defects

- 5.1 The customer must notify us in writing immediately, no later than 15 days after receipt of the goods, of any recognisable defects. Adhesive labels on the boxes, labels showing the contents and the control slips enclosed with the shipment shall be submitted to us together with the notification of the defect. Any other defects must be notified by the customer in writing immediately after discovery thereof.
- 5.2 The date of receipt by us of notification of a defect shall determine whether or not notification is in good time.
- 5.3 If the notification of a defect is unjustified we shall be entitled to demand compensation from the customer for any expenses we have incurred unless the customer can prove that it is not at fault regarding the unjustified notification of a defect.
- 5.4 Claims on account of defects shall be excluded if the notification of the defect is not received in good time.

#### 6. Taking Delivery

The customer may not refuse to take delivery on account of minor defects.

#### 7. Defects/Defects of Title

- 7.1 Claims on account of defects shall become time-barred after a period of 12 months. The foregoing provision shall not apply insofar as longer time bar periods are prescribed by statute pursuant to Section 438 para 1 (2) (building constructions and goods for building constructions), Section 479 para 1 (claim to recourse) and Section 634a (construction defects) German Civil Code [BGB].
- 7.2 The time bar period for defects commences as follows:
  - a) in case of products for vehicle and engine equipment on the date on which the product is put into use, i.e. in case of original equipment on the date of first registration of the vehicle and in other cases upon installation, but no later than 6 months after delivery of the product (date of transfer of risk);
  - b) in all other cases upon delivery of the product (date of transfer of risk).

- 7.3 If a defect arises during the time bar period the cause of which already existed on the date of transfer of risk, we may effect subsequent performance at our discretion either by remedying the defect or delivering a defect-free product. The defective product has to be sent for repair either to us or to the nearest customer service unit for the respective product determined by us.
- 7.4 The time bar period shall be interrupted for the period of time necessary for remedying the defective product or to deliver a new product. The time bar period does not start to run anew as a result of the completion of the remedy of the defect.
- 7.5 If subsequent performance should be abortive, the customer may – without prejudice to any claims to damages – rescind the contract or reduce the amount of payment in accordance with statutory provisions.
- 7.6 Claims by the customer on account of expenditure required for the purpose of subsequent performance, in particular costs of transport, transportation, labour and materials, shall be governed by statutory provisions. They shall, however, be excluded insofar as such expenditure is increased due to the fact that the product delivered was subsequently taken to a place other than the original place of contractual performance unless such removal is in accordance with the designated use of the product.
- 7.7 Claims for subsequent performance do not exist in case of merely inconsiderable deviation from the quality agreed upon or in case of only minor impairment to the use of the product. Further rights shall remain unaffected hereby.
- 7.8 The following are not deemed to be defects:
- ordinary wear and tear;
  - characteristics of the product and damage caused after the date of transfer of risk due to improper handling, storage or erection, non-compliance with installation or handling regulations or to excessive strain or use, improper operational means, commissioning or maintenance;
  - characteristics of the product or damage caused by force majeure, special external circumstances not foreseen under the terms of the contract or due to the use of the product beyond normal use or the use provided for under the terms of the contract;
  - non-reproducible software errors.
- Claims on account of defects do not exist if the product is modified by third parties or due to the installation of parts manufactured by third parties unless the defect has no causal connection with the modification.
- We assume no liability for the quality of the product based on the design or choice of material insofar as the customer stipulated the design or material.
- 7.9 Claims to recourse against us by the customer shall only exist insofar as the customer has not reached any agreements with its customer which are more far-reaching than statutory claims on account of defects, for instance accommodation agreements.
- 7.10 The customer shall give us or any third party engaged by us to perform our warranty obligation sufficient time and the possibility to carry out the warranty work. The customer may only carry out such work itself if we have given our prior consent or if Section 637 German Civil Code applies. We shall bear the costs necessary for this work to an extent which must be in a reasonable proportion to the value of the product in a defect free condition, the significance of the defect and/or the possibility of obtaining a defect-free product by an alternative method; any costs in excess of this shall be borne by the customer.
- 7.11 Clauses 7.3, 7.6, 7.7 shall not apply insofar as our product was proved to be sold by the customer or customer of the customer to a consumer without being processed or installed into another product.
- 7.12 Our obligation to pay damages and to compensate for abortive expenditure within the meaning of Section 284 BGB on account of defects shall be governed by clause 9 in all other respects. Any further-reaching claims or claims by the customer on account of defects other than those covered by this clause 7 are excluded.
- 7.13 The provisions of this clause 7 shall apply mutatis mutandis to defects of title which are not constituted by the infringement of third party industrial property rights.
- 8. Industrial Property Rights and Copyright**
- 8.1 We shall not be liable for claims arising from an infringement of third party intellectual or industrial property rights or copyright (hereinafter: industrial property right) if the industrial property right is or was owned by the customer or by an enterprise in which the customer holds, directly or indirectly, a majority of the shares or voting rights.
- 8.2 We shall not be liable for claims arising from an infringement of third party industrial property rights unless at least one industrial property right from the property right family has been published either by the European Patent Office or in one of the following countries: Federal Republic of Germany, France, Great Britain, Austria or the USA.
- 8.3 The customer must notify us immediately of (alleged) infringements of industrial property rights and of risks of infringement in this respect which become known and, at our request – insofar as possible – allow us to conduct the litigation (including non-judicial proceedings).
- 8.4 We are entitled, at our discretion, to obtain a right of use for a product infringing an industrial property right, to modify it so that it no longer infringes the industrial property right or to replace it by an equivalent substitute product which no longer infringes the industrial property right. If this is not possible subject to reasonable conditions or within a reasonable period of time, the customer shall – insofar as the customer allowed us to carry out a modification – be entitled to the statutory rights of rescission. Subject to the aforementioned preconditions we too shall have a right of rescission. The ruling set forth in clause 7.9 shall apply accordingly. We reserve the right to carry out the action at our disposal under the terms of sentence one of this clause 8.4 even if the infringement of the industrial property right has not been ruled on by a court of law with res judicata effect or recognised by us.
- 8.5 Claims by the customer are excluded insofar as the customer is responsible for the infringement of the industrial property right or if the customer has not supported us to a reasonable extent in the defence against claims by third parties.
- 8.6 Claims by the customer are also excluded if the products were manufactured in accordance with the specifications or instructions of the customer or if the (alleged) infringement of the industrial property right ensues from the use in conjunction with another product not stemming from us or if the products are used in a manner which we were unable to foresee.
- 8.7 Our obligation to pay damages in case of infringements of industrial property rights is governed by clause 9 in all other respects.
- 8.8 Clauses 7.1 and 7.2 apply mutatis mutandis to the time bar for claims based on infringements of industrial property rights.
- 8.9 Further-reaching claims or claims other than those claims of the customer governed by this clause 8 on account of an infringement of third party industrial property rights are excluded.
- 9 Claims to Damages**
- 9.1 We are liable to pay damages and compensation of abortive expenditure within the meaning of Section 284 BGB (hereinafter referred to as damages) on account of a violation of contractual and non-contractual obligations only in case of
- (i) intent or gross negligence,

- (ii) in case of negligent or deliberate fatal injury, physical injury or injury to health,
  - (iii) on account of assuming a quality or durability guarantee,
  - (iv) in case of a negligent or deliberate breach of material contractual duties,
  - (v) on account of compulsory statutory liability pursuant to the German Product Liability Act or
  - (vi) on account of any other compulsory liability.
- 9.2 The damages for a breach of material contractual duties are, however, limited to foreseeable damage, typical for the type of contract, except in the event of intent or gross negligence or on account of fatal injury, physical injury or injury to health or on account of assuming a quality guarantee.
- 9.3 Liability for damages exceeding that provided for in clause 9 is excluded irrespective of the legal nature of the claim raised. This applies in particular to claims for damages arising from *culpa in contrahendo* (fault arising in conclusion of a contract), on account of other breaches of duty and to tort claims for compensation of property damage pursuant to Sec 823 BGB.
- 9.4 Insofar as liability for damages is excluded with respect to us, this also applies to the personal liability for damages of our employees, representatives and of persons engaged by us in performance of our obligations.
- 9.5 No change to the burden of proof to the detriment of the customer is connected with the aforementioned rulings.

## 10 Retention of Title

- 10.1 We retain title to the products delivered until the full purchase price due under this contract has been paid.
- 10.2 If the retention of title is not effective under the laws of the country in which the product is located, a respective security shall be deemed agreed upon which is as far as possible equivalent to the retention of title. If the co-operation of the customer is required for the enforcement of such rights and/or for the retention of title, the customer shall take all measures necessary for the enforcement and preservation of such rights and for the retention of title.
- 10.3 Insofar as it is enforceable under the laws of the country in which territory the products are located to agree upon a further-reaching retention of title (e.g. the assignment in advance of claims of the customer arising from the sale of the products delivered by us), the customer shall, upon our request, agree upon such a further-reaching retention of title with us.

## 11 Cancellation

- 11.1 In the event of the customer's acting in breach of contract, in particular in case of default of payment, we have the right, notwithstanding our other contractual and statutory rights, to withdraw from the contract after expiry of a reasonable extended deadline.
- 11.2 We have the right to withdraw from the contract without setting an extended deadline if the customer suspends its payments or if the customer files for insolvency proceedings or similar proceedings to be instituted with respect to its assets for debt settlement.
- 11.3 We are also entitled to withdraw from the contract without setting an extended deadline if:
- (i) the customer's asset position should deteriorate materially or threaten to deteriorate and, as a result, the performance of a payment obligation to us is jeopardized, or
  - (ii) if the customer is insolvent or overindebted.
- 11.4 After declaration of such withdrawal, the customer shall immediately grant us or our agents access to the products to which we have retained title and surrender them. After respective notification in good time we may also otherwise market the products to which we have retained title in order to satisfy our due claims against the customer.

- 11.5 Statutory rights and claims shall not be restricted by the provisions contained in this clause 11.

## 12 Export Control Clause

- 12.1 Deliveries and services (contractual performance) shall be subject to the proviso that there are no obstacles to performance due to national or international export control regulations, in particular embargos or other sanctions. The customer undertakes to provide all information and documentation which is required for export and shipment. Delays due to export examinations or approval procedures render deadlines and delivery dates inapplicable. If necessary approvals are not granted or if the delivery and service are not capable of being approved, the contract shall be considered not concluded with respect to the parts affected.
- 12.2 We have the right to terminate the contract without notice if such termination is necessary for us in order to comply with national or international legal provisions.
- 12.3 In the event of termination pursuant to clause 12.2, the customer is excluded from raising a claim for any damage or other rights on account of the termination.
- 12.4 When passing on the products delivered by us (hardware and/or software and/or technology and the respective documents, irrespective of the manner in which they are made available) and work and services performed by us (including technical support of all kinds) to third parties in Germany and abroad, the customer must comply with the respectively applicable provisions of national and international (re-) export control law.

## 13 Confidentiality

- 13.1 All of the business and technical information stemming from us (including characteristics which can be deduced from goods or software delivered and other knowledge or experience) shall be kept secret with respect to third parties if and as long as such information is not proven to be public knowledge or determined by us to be resold by the customer and it may only be made available to those persons within the customer's own operation who necessarily have to be included in the use thereof and who are also committed to secrecy; the information shall remain our exclusive property. Without our prior written consent such information may not be duplicated or commercially used. At our request all information stemming from us (including, if applicable, any copies or duplicates prepared) and goods made available on loan must be returned to us immediately in full or destroyed.
- 13.2 We reserve all rights to the information mentioned in clause 13.1 above (including copyright and the right to file applications for industrial property rights such as patents, utility models, semiconductor protection etc.).

## 14 Payment Terms

- 14.1 Except as otherwise agreed in writing, payment shall be effected within 30 days of the invoice date without any deductions whatsoever. We may also, however, make delivery conditional upon contemporaneous payment (for instance cash on delivery or bank direct debiting service) or on pre-payment.
- 14.2 We are entitled to offset payments made against the oldest claim due.
- 14.3 In case of delayed payment we are entitled to charge default interest at 8 percentage points above the base interest rate. The right to assert a claim on account of further damage is not excluded.
- 14.4 Payment by bill of exchange is only admissible following prior agreement with us. We only accept bills of exchange and cheques on account of performance and they shall not be deemed to constitute payment until honoured. The costs of re-

deeming a bill of exchange or cheque shall be borne by the customer.

- 14.5 If the customer is in arrears in payment we shall be entitled to demand immediate cash payment of all claims arising from the business relationship which are due and against which there is no defence. Furthermore we are also entitled to perform outstanding deliveries only against payment in advance or against provision of a security. This right shall not be barred by a deferral of payment or by the acceptance of bills of exchange or cheques.
- 14.6 The customer shall only have the right to offset counterclaims insofar as the customer's counterclaims are undisputed, ruled with res judicata effect by a court of law or are ready for a decision after pending suit.
- 14.7 The customer shall only be entitled to withhold payments to the extent that its counterclaims are undisputed, ruled with res judicata effect by a court of law or are ready for a decision after pending suit.

## **15 Miscellaneous**

- 15.1 If one of the provisions of these Terms and Conditions and the further contracts reached should be or become ineffective, this shall not affect the validity of the remainder of the Terms and Conditions. The contracting parties are obliged to replace the ineffective provision by a ruling approximating most closely the economic success intended by the ineffective provision.
- 15.2 The courts of Hannover (with regard to local court matters the Amtsgericht (local court of) Hannover) or, at our discretion, if the customer is,
- a registered merchant, public law legal entity, public law special fund or
  - has no general domestic place of jurisdiction or
  - has moved its domicile or normal place of abode abroad after entering into the contract or if its domicile or normal place of abode is unknown,
- the courts with jurisdiction at the registered office of the operating facility carrying out the order, shall have jurisdiction and venue.  
We are also entitled to take legal action at the court having jurisdiction at the registered office or a branch office of the customer.
- 15.3 All legal relationships between us and the customer shall be exclusively bound by and construed in accordance with the laws of the Federal Republic of Germany excluding the rules on the conflict of laws and the United Nations Convention on Contracts for the International Sale of Goods (CISG).