

General Project Terms and Conditions of Franke + Pahl Ingenieurgesellschaft mbH

I. Object of Agreement, Scope, Written Form Requirements and Sub-Contractor Provisions

- We render project services in the discipline of equipment construction, including line construction and complementary services in the disciplines of switch equipment manufacturing, automation, software development, engineering and design services as well as installations and industry relocation services on behalf of the contracting party.
- The object, scope and specific terms of these project services are governed by individual contracts to be made and their respective annexes on the basis of these General Project Terms and Conditions. In the event that conflicts or deviations between these General Project Terms and Conditions and the provisions of the individual contracts should arise, the latter shall prevail.
- The service obligations of the contracting parties shall principally only arise on the basis of an individual contract. These General Project Terms and Conditions shall not establish any direct service obligations of the contracting parties.
- In the event that a separate agreement should not have been made in individual cases, we submit quotations and render project services in the disciplines stipulated in Article I. 1. Exclusively on the basis of these General Project Terms and Conditions, unless other mandatory provisions, e.g. the CMR (Convention on the Transportation Contract in International Goods Transportation) are not in conflict with same. Any application of general terms and provisions of the contracting party or the integration of the VOB is herewith expressly denied; same shall not be considered integral components of the agreement, unless we explicitly approve their application in writing. These General Project Terms and Conditions shall also apply to subsequent projects, even if this is not explicitly reiterated upon their contract execution; moreover they shall also apply if we, being aware of the fact that the contracting party's terms and conditions are in conflict with or deviate from these General Project Terms and Conditions, perform the project services without objection.
- These General Project Terms and Conditions shall apply only in relations with businesses and legal entities of public law of public-legal special entities.
- Any ancillary agreements, additions and modifications of the agreements made, including these General Project Terms and Conditions, shall be made in writing. Any waiver of the written form requirement pursuant to Sentence 1 shall be subject to a pertinent written agreement.
- We shall have the right to utilize the services of appropriate professional sub-contractors to fulfill the respective individual contract.

II. Quotation and Making of Individual Contracts

- In the absence of deviating agreements in individual cases, we shall submit quotations solely on the basis of the information provided by the contracting party, in particular of information designated by the contracting party as binding and respective documents. It shall be presumed that the information provided by the contracting party are correct, complete and final in terms of their description of the professional and technical requirements as they pertain to the contents and scope of the project services. Our quotations shall always be subject to change and non-binding.
- All product and service describing information as well as technical data in quotations, product and service descriptions, presentations, other information and advertising material; and in the case of software in particular the information provided in program documentation and other program descriptions, as well as all other documents provided to the contracting party prior to or along with the quotation shall be compiled with absolute diligence; however, they shall not be construed as quality guarantees unless expressly marked as such.
- Individual contracts shall be made on the basis of these General Project Terms and Conditions by placement of the order by the contracting party citing our quotation and our written order confirmation or by signature of an individual contract document. Verbal ancillary agreements, confirmations and agreements of service data shall be subject to our written confirmation before they are rendered legally effective.

III. Contents and Scope of the Individual Contracts, Deadlines and Notice Periods

- The contents and scope of the project services to be rendered by us shall be finally stipulated in the respective individual contract and if applicable and in service register. The individual contract and the service register shall also include provisions as to the planning, design, set-up, installation and assembly, test, start-up, documentation, orientation, training, project management and maintenance services to be potentially provided by us, as well as information on services not to be rendered by us and any service options of the contracting party. Modifications and additions to the contents or scope of the project services to be provided shall be decided in compliance with the process (Change Request) stipulated in Article VI. These decisions shall be binding only if they are agreed upon in writing.
- If so required, a procedure and time table shall be an integral component of the individual contract and we shall render all owed project services in compliance with the former. The procedure and time table shall stipulate all individual project service steps, any applicable deadlines and schedules, as well as the fact as to whether they are binding; as well as the participation obligations of the contracting parties along with the latter's responsibilities. Any modifications or additions to such process and time tables shall be subject to Article III. 1., Sentences 3 and 4 accordingly.
- If binding deadlines or schedules have been agreed upon, these shall be deemed complied with if the completion of the respective project service or partial service is indicated by their expiration.
- In the event that a final deadline has been bindingly agreed upon, the contracting party shall have the right to demand an all-inclusive delay compensation in the amount of 0.3 of the order value for each complete week of delay minus a remedial period of four weeks, however, no more than 5 % of the order value in total, provided the contracting party renders plausible proof that it has incurred damages as a result and we are responsible for surpassing the final deadlines. Any additional claims for damages or reimbursements of expenditures by the contracting party based on the delay shall be excluded. This shall not apply if the delay is the result of the breach of a cardinal contractual obligation pursuant to Article XII. 1. or, in the event of intent or gross neglect, or in the event mandatory liability due to the loss of life, personal injury or health damages; this shall not modify the burden of proof provision to the disadvantage of the contracting party.
- Operational interruptions beyond our control (insufficient supplies, strikes) and other events of force majeure as well as tardy self delivery shall release us from our obligation to perform for the duration of the obstacles and shall result in a congruent deferral of deadlines or schedules, which also include a reasonable start-up period. This shall also apply if such circumstances arise with sub-suppliers.
- In the event of other hindrances arising during the progress of the project that we are not responsible for, in particular changes of statutory requirements, other provisions, approvals and the like, which go into effect after the execution of the individual contract and that are critical for the fulfillment of the contract or in the event of the occurrence of other unforeseeable obstacles in the fulfillment of the contract, we shall be entitled to a reasonable adjustment of the deadlines or schedules and to remuneration.

IV. Cooperation and Services to be Rendered by the Contracting Party

- The contracting party shall be required to support the success of the project services to be rendered by us during each individual project service phase to the best of its ability by providing the required participation services. In the absence of a pertinent agreement in individual cases the

contracting party shall in particular ensure in a timely manner, at contracting party's expenses and within the scope of contracting party's own staff, organization and professional as well as technical responsibility that

- a) we have at our disposal information on the professional and technical requirements the contractual object must meet as a basis for our quotation and that same is correct, complete and final in terms of the descriptions provided;
 - b) we also have at our disposal all documentation required for the proper performance of the project services, in particular planning and design documents, templates, documentation as well as government agency and other approvals, moreover data and information; in particular those pertaining to existing structures and building components, equipment, installations, components, connections, hardware, programs, program components and interfaces that are objects of the project services to be rendered or that are expected to interact with same, as well as information on changes in statutory requirements and other regulations, especially safety requirements that take effect after the execution of the individual contracts and that are critical for the fulfillment of the contract;
 - c) our employees are given access to the operational and business premises as well as the pertinent object of the services to be rendered to the extent required for the performance of the project services;
 - d) any applications for the registration of our employees on location for work to be performed outside the Federal Republic of Germany are tendered in due time; that pertinent work and residential permits are obtained in a timely manner and we receive information on the minimum work and remuneration conditions at the location of assignment based on local statutory requirements in due time, along with detailed information on the applicable work conditions;
 - e) we have in hand information on the required advance and ancillary services required for the proper performance of the project services, in particular the structures to be provided by the contracting party, as well as components, equipment, installations, parts, energy and other periphery connections, electronic and other interfaces, hardware or software system requirements as well as tools and supplies; and the required security measures for existing buildings, equipment, installations, components, programs and the like, in particular the backup of contracting party's data and the required equipment and system times;
 - f) we have, at contracting party's hand at our disposal the required professionally qualified staff with the supplies and equipment they require to perform the project services properly;
 - g) the construction site and the locations planned for the installation and rendering of other project services are adequately freely accessible without any obstructions and that the structural and static prerequisites required for the proper rendering of the project services, including transportation routes and set-up locations, supply services, in particular energy, air, water and telecommunications installations, as well as items or materials required are available as needed and that adequate, theft-proof work and break rooms as well as sanitary service rooms are available for our employees and that appropriate, sufficiently large, dry and lockable rooms or spaces are available for the storage of material and supplies;
 - h) our employees and our property are integrated into the operational safety concept of the contracting party and that they are instructed to that by the contracting party's safety officer;
 - i) any waste generated during the performance of the project services including any old components, equipment, installations, parts and miscellaneous items are properly disposed of;
 - j) any errors and deficiencies in project service objects are reported to us in a traceable and reproducible format immediately.
- In the event that the contracting party should be in default of fulfilling its participation obligations, our service obligations that cannot be rendered without said participation or that can only be performed at disproportionate additional expense to us shall be suspended for the duration of said default. A respective deferral of the deadlines and schedules shall apply in addition to a reasonable start-up period. Any additional expenditure incurred as a result of the default, which shall be subject to our tendering of pertinent evidence, shall be additional reimbursed by the contracting party beyond the contractually agreed remuneration. This shall be without prejudice to any additional claims for damage compensation. Moreover, we shall have the right to perform the required services in lieu of the contracting party or have same performed by a third party; as well as the right to terminate the pertinent individual contract for important cause or, notwithstanding the contracting party's claim that the due date has not been reached and/or that the contract has not been fulfilled, demand payment of the upcoming remuneration scheduled according to the contract, if the contracting party, despite notice combined with a reasonable deadline and a threat of the performance of work in kind; termination or demand for remuneration, fails to retroactively perform the participation service contracting party has defaulted on.

V. Project Organization

- In the respective individual contract, each contracting party shall appoint one each contact (project manager) and if required, a deputy, for all project services and related matters.
- Among other things, our project manager and his/her deputy, shall be responsible for the planning, performance, management and control of the project services to be rendered. The project manager of the contracting party and his/her deputy shall render pertinent support. He/she shall in particular be responsible for all questions pertaining to professional, organizational and technical requirements and prerequisites for the project services to be rendered and for the coordination and rendering of the participation services by the contracting party pursuant to Article IV. 1 and 2. In these areas he/she shall immediately make decisions on any questions presented to him/her by us. Decisions pertaining to other issues shall be procured by said project manager as soon as possible.
- In the event that the person assigned to the responsibility of project manager has been expressly agreed upon between the parties, each change of said person or his/her deputy shall be communicated to the respective other party immediately.
- The project managers or their deputies shall periodically discuss the progression of the project services to be rendered. If required, we shall compile minutes of meeting of the respective meeting, which shall be submitted to the contracting party within a reasonable period of time. Provided the contracting party does not object to the minutes of meeting within 14 days after its receipt in written detail, they shall be deemed approved.
- In the event of disputes the parties shall strive to arrive at an amicable solution via their project managers prior to taking legal action. In the event that they should fail to arrive at a solution on this level, the matter shall be escalated to the executive management level. If a satisfactory mutual solution cannot be achieved on this level, the parties shall have the option to take legal action. This shall be without prejudice to the parties' right to obtain temporary legal protection.

VI. Changes to Services (Change-Request)

- Changes and additions to the contents or scope of the project services to be rendered according to the respective individual contracts may be proposed in writing by each party until they are accepted after verification by the respective project manager communicating the request to the opposing project manager, stipulating the objective specifications as to the change or addition along with a professional and/or technical justification as well as the anticipated impact on deadlines or schedules as well as the remuneration (Change Request).
- In the event that the contracting party should submit a Change Request, we shall verify – within a reasonable period of time – whether said Change Request is technically feasible and acceptable for us to perform in regard to the related expenditures and the proposed modification of deadlines and schedules. If this should not be the case, we shall have the right to reject the performance of the modification or addition. In all other cases we shall submit to the contracting party a binding modification or addition quotation that reflects the additional or reduced remuneration resulting

from the change or addition and the deferrals of the deadlines and schedules. The provisions stipulated in Article II. 1 and 2 shall apply accordingly.

3. The contracting party shall undertake to review the modification or addition quotation within a reasonable period of time and shall communicate the pertinent decision to us. If the contracting party accepts the modification or addition quotation, it shall become binding subject to the provisions of Article III. 1, Sentence 4. In the event that the contracting party should reject the modification or addition quotation or if the former should fail to comment on the modification or addition quotation in due time, the project services shall remain as is and the scope shall remain unchanged.
4. We shall be entitled to expense-based remuneration for the performance of the change request procedure and the related additional expenditures, which shall be based on the billing structure agreed upon in the individual contract.
5. While the change request procedure is pending, the contracting party shall have the right to demand the suspension or restriction of the rendering of project services until a decision on the change or addition has been made; such a request shall be made in writing and shall be subject to the payment of remuneration for the time lost. In this case the deadlines or schedules shall be deferred accordingly, and shall also factor in a reasonable start-up period.
6. In the event that we should communicate a Change Request to the contracting party, the contracting party shall review same within a reasonable period of time and notify us of the contracting party's decision. In the event that the contracting party should accept the modification or addition proposal, it shall be rendered binding subject to the provisions of Article III. 1, Sentence 4. If the modification or addition proposal is rejected, the project services shall remain as is and the scope shall remain unchanged. If change or addition proposals are rejected against our recommendation, the contracting party shall assume the responsibility for any negative consequences of the non-performance of the change or addition proposal.

VII. Copyright and Licensing Rights Inherent in Work Product, Inventions

1. The contracting party shall undertake to adhere to any existing copyright protection or other intellectual property right provisions pertaining to the provided work product, in particular planning and design documents, documentation and software. This shall also apply if the copyright and other intellectual property rights are held by third parties.
2. In the event that software of third party manufacturers (third party software) is supplied, the contracting party shall undertake to use the provided software only in compliance with the license provisions of the respective manufacturer and in the event of re-sale, provided same is permitted, subject the acquiring party to the same obligations.
3. The contracting party shall obtain the permanent, non-exclusive and non-transferable right to use work product, in particular work protected by copyright that has been rendered by us within the scope of the respective individual contract and has been provided to the contracting party, including software that was compiled specifically by commission of the contracting party and adapted individually in terms of programming (individual software) and to utilize same for the purposes pursued according to the individual contract within the contracting party's own organization, provided no other agreements have been made in the individual contract.
4. If the contracting party should have exclusive licensing rights for the work product attained within the scope of the respective individual contract based on a deviating agreement in the individual contract, we shall have the right, to use the own knowledge of our employees of sub-contractors used to attain the work product as well as our tools and processes that have also been used and that were intended and appropriate for the utilization in other service relationships, for the purposes of our business operations. This shall not apply to knowledge that applies exclusively to the peculiarities of the contracting party's business operations.
5. In the event that based on deviating agreements in the individual contract the contracting party should be entitled to the transfer of copyrights or rights vested in inventions, we shall be required to assign such rights only on a step by step basis in exchange for the reimbursement of the remuneration we are required for the use of said rights to our employees or other third parties.
6. The compilation, provision and utilization of individual software shall additionally be subject to the Supplementary Provisions for the Compilation, Provision and Use of Individual Software provided below under Article IXX. Within their scope of application, they shall take priority.
7. In the event of installation of mobile objects into other objects that are not ours, we shall acquire co-ownership to these other objects at the ratio of the value of our objects in comparison to the other connected or blended objects at the time the connection or blending is performed. If the contracting party should acquire the sole title to said object despite the above agreement, we are herewith in agreement that the contracting party shall grant us the pro-rated co-ownership.

VIII. Remuneration and Payment Terms

1. The remuneration to be paid by the contracting party shall be dictated by the respective individual contract. In addition, the material used in fulfillment of the agreement shall be billed based on cost incurred, unless another provision has expressly been agreed upon in the individual contract.
2. Unless otherwise agreed upon in the individual contract, the prices in effect at the time of the rendering of the respective project service or partial service shall apply.
3. In the event that we should have accepted the responsibility for additional services in the individual contract, in particular planning, design, set-up, assembly, installation, testing, start-up, documentation, orientation, training, project management or maintenance services, and no other agreement has been made, the pertinent services shall be subject to additional remuneration. The remuneration shall comprise in particular our billing rates in effect at the time the respective service is rendered for work hours as stipulated in the quotation or order confirmation, as well as all required ancillary costs for preparation, travel, waiting and errands.
4. In addition to the remuneration, we shall have the right to demand reimbursement of the following all-inclusive expenses. Mileage charges shall be based on the calculations pursuant to route planner MapPoint/Microsoft:
 - a) In the event that our employee(s) are working at an assignment location that is located more than 100 km from the branch assigning our employee(s), the contracting party shall be required to pay the travel cost of each employee from/to the place of assignment per car at the mileage rate in effect for each distance kilometer at the time the service is rendered, or if public transportation services are used, the travel costs via German Railway Services (2nd Class) or air travel costs (economy class) plus any bus ticket costs or taxi charges. If case lit. b) applies, Sentence 1 shall also apply to travel to/from the assignment/lodging location and to one each weekend trip home after six each weeks of uninterrupted assignment.
 - b) In the event that our employee(s) are working at an assignment location that is located more than 100 km from the branch assigning our employee(s), we shall have the right to bill the contracting party for any costs incurred for overnight accommodations of an employee against presentation of receipts; however, at a minimum in the amounts accepted as standard overnight accommodation rates by the German internal revenue service, as well as any per diem incurred by an employee in the amounts accepted as standard per diem rates by the German internal revenue service plus value added tax. Sentence 1 shall apply accordingly if the assignment location of the employee is less than 100 km from the employee's business domicile and the return home on a work day is no longer tolerable. Sentences 1 and 2 shall not apply if the contracting party pays for our employee's accommodations and other expenditures directly.
 - c) In any case of lit. b) we shall have the right to bill to the contracting party any travel expenses incurred by the employee from/to the place of assignment per car at the mileage rate in effect for each distance kilometer at the time the service is rendered, or if public transportation services are used, the travel costs via German Railway Services (2nd Class) or air travel costs (economy class) plus any bus ticket costs or taxi charges.

5. Unless otherwise stipulated in the individual contract, especially any individual contract based payment plan, we shall bill the reimbursements we are entitled to on a weekly basis.
6. All compensation shall be due along with applicable value added tax and shall be invoiced and paid accordingly. In the event that billing is expense based, our invoices shall include information on the work hours performed by our employees, the amount of the rates billed as well as a description of the billed services as well as the ancillary costs to be refunded and of the materials used.
7. Unless otherwise agreed upon in the individual contract, the contracting party shall be required to pay our invoices within 14 days after receipt, net cash without any deductions, all fees paid through to the payment location. Any agreed upon payment terms shall begin on the day of receipt of the invoice by the contracting party. A payment shall be deemed made only once we have access to the amount.
8. Payments by bank draft shall be permitted only based on prior agreement. The acceptance of bank drafts or checks shall be for the purpose of fulfillment only; the time actual payment shall be deemed made shall be the date the draft or check amount is cleared by our bank; and for all draft and check presentation procedures the day we are no longer held liable for the amount. All costs and fees incurred in conjunction with the discounting or collection of drafts or checks shall be borne by the contracting party.
9. The contracting party shall be in default of payment if payment is not made upon issuance after a notice following the due date. Default shall have occurred at the latest, even in the absence of a notice, 14 days after the due date and receipt of invoice. In the event of late payment we shall have the right to demand the payment of late payment interest in the amount of 8 percentage points above the pertinent annual prime rate pursuant to § 247 BGB (German Civil Code) as of the start of the default. We reserve the right to prove and claim higher damages as a result of the default.
10. In the event of default on payment and without prejudice to any other statutory rights we may be entitled to, we shall have the right to make payable immediately and without prior notice any partial compensation obligations of the contracting party due at a later date as well as any remuneration obligation of the contracting party arising from other contracts; we shall also have the right to withhold any other pending rendering of goods and services under the individual contract or other contracts and to demand advance payments or collateral prior to the performance. In such cases we shall also have the right to revoke any accepted bank drafts without regard to their terms and demand cash payment. The above provisions shall also apply if, after accepting the order, we should become aware of facts that trigger justified misgivings about the contracting party's ability to pay.
11. The contracting party shall have the right to set of receivables against our receivables only if the former are undisputed, have been finally adjudged by a court of law or are ready for judgment. The contracting party shall have the right to claim withholding rights only for claims arising from the same contractual relationship. The contracting party shall not be entitled to any right to withhold based on partial services pursuant to § 320 Article 2 BGB.

IX. Acceptance

1. The contracting party shall undertake to accept rendered project services and autonomous partial services pursuant to the following provisions.
2. We shall notify the contracting party that a pertinent project service or partial service is ready for acceptance once that project service or partial service is complete or, if test operations have been agreed upon in the individual contract, upon completion of said test operation.
3. Unless otherwise agreed upon, the contracting party shall begin the acceptance inspection immediately upon receipt of said notice and shall complete same within a reasonable period of time. The objective of the acceptance inspection is the confirmation that the contents and scope of the respective project service or partial service agreed upon in the individual contract has been attained; in particular the implementation of any performance register.
4. Once the acceptance inspection has been completed, the contracting party shall immediately declare the acceptance of the respective project service or partial service. The contracting party shall not have the right to delay or refuse the making of the acceptance declaration based on irrelevant deficiencies. Such deficiencies shall be eliminated within the scope of the Material Defects Warranty pursuant to Article X.
5. In the event that the contracting party should refuse the acceptance declaration based on substantial deficiencies that prevent the acceptance justifiably, the contracting party shall hand over to us a final list of all deficiencies preventing the acceptance. Same shall be eliminated within a reasonable period of time. Once the remedial work is complete, we shall once again notify the contracting party that the respective project service or partial service is ready for acceptance. Within the subsequent acceptance inspection only the deficiencies listed as hindrances shall be inspected, provided they can be objects of an isolated inspection.
6. Unless otherwise agreed upon, the contracting party shall be required to generate a written acceptance log, which shall be signed by the contracting party. The log shall provide a final list of all deficiencies detected, divided into substantial deficiencies preventing the acceptance and irrelevant deficiencies along with descriptions and shall stipulate the reasons for any refusal to grant acceptance.
7. The contracting party's failure to perform an acceptance of the project service or partial service despite having the obligation to perform pursuant to Article IX, 4 shall be deemed equivalent to the granting of said acceptance.
8. The contracting party's purpose compliant use of the project service or partial service for a period of time that is not insignificant following our notification that the project service or partial service is ready for acceptance shall also be deemed equivalent to the granting of acceptance, unless the acceptance is justifiably rejected pursuant to Article IX, 5.
9. In the event that the contracting party should delay the acceptance culpably, we shall set a reasonable deadline during which the contracting party shall be required to start the acceptance inspection, continue same or complete same by issuing an acceptance declaration or rejection. If the contracting party should allow this deadline to pass, the acceptance shall be deemed to have been granted.
10. In the event that the condition of the project service or partial service should exclude the possibility of performing an acceptance, the performance of an acceptance shall be substituted by the delivery of the project service or partial service.
11. If the contracting party is in default of accepting partial services or payment for accepted partial services, we shall have the right to withhold the performance of additional partial services.
12. The title to the mobile objects and work products, and in the case of software the contractually awarded licensing rights, shall transfer to the contracting party upon acceptance and payment of remuneration due in conjunction with the acceptance or earlier, provided a transfer of rights has not occurred earlier due to statutory requirements or special agreements.

X. Warranty

1. Unless otherwise agreed upon in the individual contract we shall not assume any quality guarantees for any project services to be rendered by us in our relationship with the contracting party.
2. In the event that a project service to be rendered by us should have a deficiency that was made conditional during the acceptance process or that was not detectable at the time, the contracting party shall have the right to demand remedial fulfillment at our discretion – either in the form of elimination of the deficiency or new production. The required expenditures, such as labor and materials costs shall be borne by us only if these expenditures are not increased by the fact that the service object was relocated to a different location than the agreed upon place of fulfillment retroactively; unless such an act of relocation is congruent with the object's purpose of utilization.

At our discretion, replaced parts shall either be returned to us or professionally disposed of by the contracting party.

3. In the event that we should fail to complete the remedial action successfully by the reasonable deadline to be set by the contracting party and if the remedial action should fail as such, the contracting party shall have the right to at contracting party's discretion demand reduction (reduction of the agreed-upon remuneration), or, if the breach of duty more than minimal, rescind from the agreement, without prejudice to the contracting party's entitlement to damage compensation and/or expense reimbursement pursuant to Article XII.
4. The contracting party shall be required to support us to the best of contracting party's abilities in our remedial efforts, in particular by providing us with the required records, documents, data and information; by granting us the necessary access to contracting party's operational and business premises as well as to the affected object of service; by taking the required safeguarding precautions and by making available to us the required equipment or system times, as well as qualified employees and the necessary infrastructure.
5. In the event that the deficiency should be based on defects in the goods or services of one of our sub-contractors, we shall have the right to primarily meet our obligation to take remedial action by authorizing the contracting party to file the claims we are entitled to directly against our sub-contractor in contracting party's own name. In this case the contracting party shall undertake to initially file the claim for remedial action with the sub-contractor. We shall only bear subsidiary liability in this case; however, this shall not apply in the event of a claim filed through a court of law. We shall support the contracting party in filing the claim against the sub-contractor to the best of our abilities, in particular by providing all required information.
6. We shall have the right to refuse the performance of remedial action until the contracting party has paid the applicable remuneration minus a portion congruent with the financial value of the defect to us. Moreover, we shall have the right to refuse the performance of remedial action if the contracting party has not reported the deficiency immediately upon its detection and has not provided a plausible description of the error symptoms, and to the extent that is possible, handed over written records or other documents visualizing the deficiency.
7. Claims for deficiencies, with the exception of expense reimbursement entitlements for deficiencies that are subject to the provisions of Article XII shall be subject to a statute of limitations of twelve months after the acceptance date. This shall not apply if the law mandates a longer statute of limitations. We shall assume liability for remedial work through the expiration date of the statute of limitations originally in effect for the service object. The execution of the right to rescind shall be governed by § 218 BGB.
8. The deficiency entitlements shall be null and void if the deficiency was caused by reasons the contracting party or third parties are responsible for, in particular if the service object was altered by the contracting party or a third party unilaterally, in particular as a result of the installation of third party components, or, in the case of software by retroactive programming; or if the service object was not used by the contracting party or a third party in manner compliant with the applicable and effective operating provisions, or in the case of software, program documentation; or if same was used in combination with systems or components other than those presumed by us or if the defect is the result of other causes beyond our control, such as fire, power outage, errors in equipment, component, hardware or software of other manufacturers.
9. Software shall additionally be subject to the condition that the parties are aware of the fact that the state-of-the-art does not make it possible to rule out all errors in software under all application conditions. Software deficiencies shall therefore only be such deviations from the functions stipulated in the related program documentation that prevent the use of the software or hinder it not insignificantly.

XI. Third Party Rights

1. Within the scope of the statutory provisions we shall warrant that the work product generated by us within the scope of rendering project services shall not be encumbered by any third party rights that would be in conflict with the contract compliant utilization by the contracting party.
2. In the event that third parties should claim such rights, we shall make our best efforts to defend the contracting party against third party claims of such rights at our expense. The contracting party shall notify us immediately if any such rights are claimed against the contracting party and shall grant us all powers of attorney and assign to us all authorities required to defend the contracting party against rights claimed by third parties. We shall be required to reimburse the contracting party for any costs incurred that are necessary to pursue the contracting party's rights.
3. Once it is definite that legal deficiencies do in fact exist, we shall, at our discretion, have the right to either eliminate the rights of third parties or their claims, which do hamper the contract compliant use of the work product by taking appropriate action or shall modify or substitute the work product in such a manner that it no longer infringes upon third party rights if and to the extent that such action does not have a major adverse impact on the agreed upon function of the work product.
4. In the event that we should fail to eliminate the legal defect pursuant to Article XI, 3 by the reasonable deadline to be set by the contracting party, the contracting party shall have the right, at contracting party's discretion to either demand reduction (reduction of the agreed-upon remuneration), or if the breach of duty is not only minimal – rescind from the agreement, without prejudice to any other damage compensation or expense reimbursement entitlements pursuant to Article XII.
5. Article X, 7 shall accordingly apply to the statute of limitations for claims based on legal deficiencies.

XII. Liability

1. Subject to the provisions of Article XII, 2 we shall assume liability based on the statutory provisions provided the contracting party files damage compensation or expense reimbursement claims based on intent or gross neglect; or in cases of wrongful death suits, personal injury suits or suits pertaining to health damages, or in the event that we culpably breach a cardinal contractual duty. Cardinal contractual duties shall be such obligations whose fulfillment is required to ensure the proper performance of the contract and whose breach puts the attainment of the purpose of the contract in jeopardy and into the compliance with which the contracting party would regularly invest good faith.
2. In the event that we are not accused of any intentional or grossly negligent breach duty or if no wrongful death suits, personal injury suits or suits pertaining to health damages are filed, the statute of limitations shall be twelve months and our damage compensation liability shall be limited to the amount that is foreseeable and typically expected for damages. In the event of data loss we shall at a maximum be liable for the expense that would have been incurred if the contracting party had properly backed up the data and the data would have had to have been recovered. Expense reimbursement entitlements of the contracting party shall in any event be limited to the interest the contracting party has vested in the fulfillment of the agreement.
3. With the exception of the compulsory provisions of the Product Liability Act, which shall not be prejudiced by this at all, any further liability in relation to damage compensation or expense reimbursement than the liability stipulated in these General Project Terms and Conditions shall be excluded, regardless of the legal grounds of the entitlement claimed. We shall also not be liable for technical information and consulting services unless same were agreed upon in separate agreements along with an arrangement for special remuneration or they are cardinal contractual obligations pursuant to Article XII, 1.
4. In the event that our liability is excluded pursuant to these General Project Terms and Conditions, this shall also apply to the liability of our corporate organs as well as our agents and representatives, especially our employees.

XIII. Confidentiality Obligations and Return of Documents

1. The parties shall undertake to keep strictly confidential and protect against any unauthorized third party access any information or documents of the other party pertaining to business or company

secrets or such marked or identifiable as confidential and to utilize such information or documents only for the contractually agreed upon purposes.

2. We shall undertake to grant access to confidential information or documents of the contracting party only to those employees or sub-contractors that are entrusted with the rendering of the project services within the scope of performing the respective individual contract. Both parties shall be required to have their employees or sub-contractors execute a respective confidentiality agreement if so requested by the other party and to present same to the other party.
3. In the event that confidential information or documents of the other party pursuant to Article XIII, 1 have to be disclosed as a result of a statutory obligation to disclose, the other party shall be notified immediately and if possible prior to the sharing of the information or documents.
4. The rights and obligations arising from Article XIII 1 through 3 shall not be affected by the termination of the respective individual contract. Both parties shall be required to return documents and physical information of the other party pursuant to Article XIII 1 to the other party upon termination of the respective individual contract or, upon request of the other party, shall destroy same accordingly. Unless otherwise agreed upon in the pertinent individual contract or in these General Project Terms and Conditions, this shall also apply to other documents or objects provided in conjunction with the performance of the individual contract.

XIV. Data Protection

The parties shall undertake to comply with the statutory provisions pertaining to the protection of data within the scope of performing the pertinent individual contract and to contractually require their employees or sub-contractors to comply with these provisions accordingly.

XV. Governing Law and Place of Jurisdiction

1. The legal relationship between our company and the contracting party shall be governed exclusively by the laws of the Federal Republic of Germany. The UN Convention on the International Sale of Goods shall not apply.
2. The place of jurisdiction for any and all litigation arising from or in connection with the respective individual contract shall be the circuit or state court in Hamburg, depending on whichever is competent based on the facts of the case. We shall, however, also have the right to file suit against the contracting party at the latter's general place of jurisdiction. These provisions shall be made without prejudice to any mandatory exclusive places of jurisdiction dictated by applicable laws.

XVI. Term of the Agreement and Termination

The contract term and termination options as well as the consequences shall be governed by the individual contract.

XVII. Final Provisions

1. Any and all publications by the parties or those made upon their initiation pertaining to the content of an individual contract, in particular publications in the printed press, on the radio or on television, as well as publications for promotional purposes, shall be coordinated between the parties prior to their publication. This shall not apply to publications that are required by statutory provisions or upon government agency instruction.
2. In the event that certain provisions of these General Project Terms and Conditions or of the pertinent individual contract should be or become ineffective or unenforceable or should these General Project Terms and Conditions or the pertinent individual contract contain any omissions, this shall not affect the effectiveness of the remaining provisions and the individual contract as such. This shall not apply if upholding the individual contract would impose an unacceptable hardship on one of the parties.
3. The parties shall undertake to strive to substitute the ineffective or unenforceable provision by an effective or enforceable provision that meets the purpose and intention of the ineffective or unenforceable provision as closely as possible as far as the economic result is concerned. Any omission shall be remedied through the making of a complementary provision by the parties, which shall meet the economic objective of the respective individual contract as closely as possible.

XVIII. Complementary Assembly Terms and Conditions

The rendering of project services in the discipline of assembly shall be subject to the following additional provisions, which shall prevail over the above provisions within their scope of application:

1. Assembly Services

- 1.1 Our employees and agents are not authorized to render services that are not performed in fulfillment of our obligations to render assembly services agreed upon in the individual contract or that are initiated by the contracting party or a third party without first obtaining our consent. We shall not assume any liability for such services, which shall not be deemed part of our scope of responsibilities.
- 1.2 In the event that assembly services are not being performed on location at the contracting party, or on our premises or at a third party location, the contracting party shall be required to organize the transportation of the service object to and from said location at the contracting party's cost and risk, and to obtain pertinent insurance coverage, if required.

2. Cooperation and Services to be rendered by the contracting party

- 2.1 In the event that no other agreement has been made in individual cases, the contracting party shall, in addition to providing the participation services governed above under Article IV 1, ensure the following within the scope of contracting party's own staff, organizational, professional and technical responsibility:
 - a) instruction of our employees by a safety officer of the contracting party as to any additional safety provisions to be observed that are not already governed by the individual contract or the nature of the service object or the assembly service to be performed prior to any work being performed; and written documentation of said instructions as well as submission of the latter to us upon our request;
 - b) availability of the pertinent operator of the machine or equipment upon our request and operation of the equipment or machine by the former in compliance with the instructions of the assembly staff.

- 2.2 The contracting party shall also undertake to have an authorized representative sign off on service reports presented by our employees immediately upon their submission.
- 2.3 Our employees have been instructed to suspend the performance of any and all services if compliance with the applicable safety regulations is not warranted. Any delays resulting from such suspensions shall be governed by Article IV 3.

3. Remuneration for Assembly Work

- 3.1 An all-inclusive price agreed upon for assembly services shall apply only if the assembly services are performed during our normal business hours, i.e. Monday through Friday from 7:00 AM through 6:00 PM. If our employees are rendering services beyond this time frame for the contracting party and the hours add up to more than 8 work hours per calendar day or 38.5 work hours per calendar week, we shall have the right to charge the following surcharges based on the applicable hourly rate for each additional work hour performed by our employees:

25 %	for each additional work hour performed between 8.00 PM and 6.00 AM,
25 %	for the first and second overtime work hour per business day or for the first and second work hour per calendar week,
25 %	for the first through sixth overtime hour performed on a Saturday,

- 50 % as of the third overtime hours per business day and as of the seventh overtime hour on a Saturday or as of the third overtime hour per calendar week,
- 60 % for any hours worked on a Sunday
- 100 % for any hours worked on a holiday if the holiday falls on a Saturday or Sunday,
- 150 % for any hours worked on a holiday if the holiday falls on a week day,
- 12,5% for any hours worked provided the prerequisites of Article VIII 4 lit. b) Sentence 1 or 2 have been met and our employee spends the night at the place of assignment.

In the event that multiple conditions for surcharges apply, only the maximum surcharge shall be billed. The statutory holidays at the assignment location shall apply.

- 3.2 Unless other provisions have been expressly agreed upon, we shall have the right to demand the contracting party pay not only the remuneration, but also the all-inclusive expense reimbursement charges stipulated in Article VIII 4. If we should incur additional costs due to the assignment of an employee to a foreign location, the contracting party shall be required to reimburse same.
- 3.3 The billing of the work hours performed by our employees who are subject to surcharges shall be performed on the basis of the time sheets maintained by our employees. The contracting party shall undertake to verify the time sheets presented by our employees immediately and to have same signed by an authorized representative and to place the company stamp on same for confirmation. One copy of said time sheets shall remain with the contracting party for invoice verification purposes. In the event that the contracting party should fail to comply with the provisions of Sentence 2, and the contracting party is accountable for this failure, the records of the employee shall be deemed approved. This shall not apply if the contracting party raises objections against the correctness of the information provided in the time sheets within one week after receipt of the invoice in which the pertinent work hours of the employee are billed.
- 3.4 In the event that the rendering of assembly services should be delayed beyond for reasons we are not responsible for, the contracting party shall reimburse the costs for any waiting periods and additionally required travel.
- 3.5 In the event that one of our employees should be assigned to a job outside of the Federal Republic of Germany, the contracting party shall, at contracting party's expense, make the required registrations for the employee at the assignment location in due time and shall obtain a possibly required work or residential permit. In the event that the assignment location mandates the compliance with specific minimum work and/or remuneration conditions by law and/or if the assignment of the employee is subject to us obtaining permits or reporting same, the contracting party shall communicate these requirements to us in detail as to the applicable work conditions in due time.

IXX. Complementary Provisions for the Compilation, Provision and Utilization of Individual Software

The compilation, provision and utilization of individual software shall additionally be subject to the following provisions, which shall prevail over the above provisions within the scope of their application:

1. Scope of Licensing Rights

- 1.1 The individual software and any program documentation supplied along with it shall be protected by applicable copyrights. The contracting party shall undertake to comply with the copyright and other intellectual property rights inherent in the delivered individual software and program documentation. In terms of the relationship with the contracting party, all titles to the individual software and program documentation shall be vested exclusively in us, even to the extent that the individual software or program documentation has been developed based on the instructions or with the participation of the contracting party. In the absence of another agreement in the individual contract that contracting party shall be awarded a permanent, non-exclusive and non-transferable licensing right in the individual software and the program documentation based on the following regulations:
- 1.2 The granted non-exclusive licensing right shall authorize the contracting party to use the individual software for the purposes pursued by the individual contract within contracting party's own operations. The term use used in the context shall the loading, displaying, running, transferring and storing of the individual software to purposes of its execution and for the processing of data.
- 1.3 The contracting party shall have the right to make a back-up copy of the individual software on a separate data medium, which shall be marked accordingly. The utilization of the back-up copy shall be permitted only in the event that the originally delivered copy or original medium should decline in terms of quality or be destroyed. The contracting party shall be subject to these General Project Terms and Conditions also in terms of the utilization of the back-up copy. Incidentally, the contracting party shall not have the right to make copies of the individual software or program documentation or parts thereof.
- 1.4 The contracting party shall not have the right to utilize the individual software outside of contracting party's operations or for purposes other than those pursued in the individual contract at contracting party's own operation or enable third parties who are not part of contracting party's operations to use the individual software or to temporarily or permanently provide the individual software to third parties. Third parties for this purpose shall also be branches of contracting party or companies affiliated with the former, unless otherwise expressly agreed upon.
- 1.5 Without our consent, the contracting party shall not be permitted to process, modify or otherwise rework the individual software or to connect same with other programs in any other manner than via the intended interfaces. This shall be without prejudice to the provisions of § 69 d Article 3 UrhG (German Copyright Law).
- 1.6 The duration of the granted license notwithstanding, we shall have the right to terminate the license without notice if the provisions of these General Project Terms and Conditions are culpably breached, unless the infringement and its consequences are minimal. In this case the contracting party shall not be entitled to any reimbursement of any licensing fees paid. We reserve the right to claim damage compensation.
- 1.7 If the contracting party should have exclusive licensing rights for the individual software attained within the scope of the respective individual contract based on a deviating agreement in the individual contract, we shall have the right, to use the own knowledge of our employees of sub-contractors used to attain the individual software as well as our tools and processes that have also been used and that were intended and appropriate for the utilization in other service relationships, for the purposes of our business operations. This shall not apply to knowledge that applies exclusively to the peculiarities of the contracting party's business operations.

2. Remuneration

In the absence of a different agreement in the individual contract, the remuneration for the licensing of individual software shall comprise a one-time fee to be paid upon provision of the individual software.

3. Confidentiality and Custodial Obligations

- 3.1 The contracting party shall treat all information as confidential that extends beyond the merely exterior appearance and functionalities of the individual software. This shall pertain in particular to information about the methods and processes used as well as confidential material and documents related to the individual software.
- 3.2 The contracting party shall undertake to safeguard the confidentiality in third party relations by its employees as well; and in particular to prevent the unauthorized access of third parties to the individual software and documentation by taking appropriate precautions.
- 3.3 The contracting party shall store the copy of the individual software contracting party has been provided, and if applicable, the provided original data medium as well as any back-up copies in a place where they are protected against unauthorized third party access and shall instruct contract-

ing party's employees expressly as to the requirement to comply with the agreed upon confidentiality and custodial obligations.

4. Updates and Upgrades

These complementary provisions for the compilation, provision and utilization of individual software shall also apply to later versions (updates) and expansions of the individual software (upgrades) provided to the contracting party, if deviating agreements are not made in conjunction with the provision of the respective updates or upgrades. In the absence of a different agreement, the contracting party shall not be entitled to the provision of updates and upgrades to the individual software.

XX. Complementary Provisions for Industry Relocations

The rendering of project services in conjunction with industry relocations shall be subject to the following provisions, which shall take priority over the above provisions within their scope of application:

1. Scope of Services

- 1.1 The contents and scope of project services to be rendered by us within the scope of industry relocations, e.g. the dismantling, removal, loading, transportation, unloading, move-in, re-assembly and/or re-start of equipment or machines to be relocated as well as, if applicable the provision of the transportation and/or support supplies for the transportation of said items, the packaging and/or operationally secure loading, the documentation of the status quo of the equipment or machine prior to dismantling and/or re-assembly of the equipment or machine into the documented status quo shall be finally governed by the respective individual contract, in particular in a service register.
- 1.2 In the event that installations of machines are to be re-assembled into a status deviating from the status quo, in particular if they are to be converted to aligned with changing needs of the contracting party or changed statutory requirements, this shall also be separately agreed in the respective individual contract and shall be subject to additional remuneration.

2. Cooperation and Services to be Rendered by the contracting party

- 2.1 In the event that no other agreement has been made in individual cases, the contracting party shall, in addition to providing the participation services governed above under Article IV 1, ensure the following within the scope of contracting party's own staff, organizational, professional and technical responsibility
 - a) that we have at our disposal all required information and documents required for the proper rendering of the agreed-upon industrial relocation project services, in particular government agency and other permits, information and documentation pertaining to dangerous as well as hazardous and / or health endangering substances in equipment or machines to be relocated as well as information on weights, quantities and the value of the goods to be transported.
 - b) that the equipment or machines to be relocated are free of any pressure and all, in particular hazardous and / or health threatening media, in particular energy, gas, water, oils, coolants and lubricants;
 - c) that program and data back-up procedures have been performed on the equipment or machines to be relocated;
 - d) that all required transportation paths and parking places are fully accessible, secured and adequate in terms of load capacities;
 - e) that all foundations required for the reinstallation of the equipment or machines have been produced in compliance with the instructions of the manufacturer and all required periphery connections up to the connection locations of the respective equipment or machine are in place;
 - f) that the operator of the pertinent equipment or machine is available for any test operations agreed upon in the individual contract and for the re-start of the equipment or machine.

2.2 Any necessary interim storage shall be organized by the contracting party at the latter's own expense.

2.3 The contracting party shall be solely responsible for compliance with applicable statutory provisions pertaining to the declaration, packaging, and accompaniment by transportation documents, written instructions, etc. for dangerous goods and shall be liable for same in the event of damages.

2.4 In the event that any agreed upon transportation services should require processing through customs, the contracting party shall ensure the proper and on-time handling of all customs procedures unless other agreements have been made in the individual contract. In the event that any customs duties, taxes, customs penalties, warehousing costs or other expenditures should be incurred in conjunction with customs handling, the contracting party shall be required to reimburse same.

3. Remuneration

- 3.1 The remuneration of any transportation services and/or warehousing services shall be stipulated in the quotation and in the invoice on the basis of fixed costs. The provisions pursuant to Article XVIII 3.1 – 3.5 shall additionally apply.
- 3.2 Fees and costs for government agency expenditures as well as all procurement costs and expenses incurred as a result of government agency requirements as well as police escort fees and other costs for government agency mandated safety provisions shall be borne by the cc, unless otherwise agreed upon in the individual contract.
- 3.3 Weather condition caused and other interruptions beyond our control shall not reduce our entitlement to remuneration after deduction of any expenses we did not incur, unless otherwise agreed upon in the individual contract.
- 3.4 In the event that any sub-freight forwarders commissioned with the transportation should claim cancellation fees based on ad-hoc cancellations or delays the contracting party is responsible for, we reserve the right to demand reimbursement of same from the contracting party.
- 3.5 In the event that difficulties should arise during a potentially agreed upon re-start, we shall, upon obtaining the consent of the contracting party, ask the manufacturer of the equipment or machine to render support. Costs that are incurred as a result of the services rendered by the manufacturer shall be invoiced based on receipts plus a 5 % management fee.

4. Liability and Insurance

- 4.1 In the event that transportation services or warehousing services have been agreed upon, we shall assume liability for damages resulting from the loss, partial loss or damages to the transported good that occurred during the time period between the takeover of the load for transportation and its delivery according to the provisions of the HGB (German Trade Code). **The maximum liability amount shall be limited to 2 special drawing rights per kg. Our liability for damages other than those to goods, with the exception of personal injury or death and material damages to third party goods shall be limited to three times the amount that would have to be paid in the event of the loss of the goods, however, at a maximum to an amount of € 100,000.00 per incident.** This shall be without prejudice to §§ 431 Article 3, 433 HGB. We shall not be liable for any consequential damages or costs or for purely financial losses, declined profits, lost profits or lost revenues as well as expenditures for replacements.
- 4.2 The takeover of a load for transportation pursuant to Article XX 4.1 shall have occurred once the equipment or machine to be relocated is packaged and loaded in a transportation ready manner, which shall be confirmed by the contracting party through the execution of a handover log in writing. The delivery pursuant to Article XX. 4.1 shall have occurred once the equipment or machine to be relocated has arrived at the destination and is ready for unloading, which shall be confirmed by the contracting party through the execution of a handover log in writing.