

# General Terms and Conditions for Services and Supplies of KACO new energy GmbH



Issued March 2020

## 1. General Conditions

1.1 The scope, quality and all terms and conditions of any parts, equipment, documentation, works or services (collectively referred to as "Work" or the "Works") shall be exclusively defined by the written provisions of these terms and conditions (hereinafter referred to as "Contract"). Terms and conditions of Customer including general terms and conditions shall apply only where expressly accepted in writing by the provider of the Work (hereinafter referred to as "Supplier"). The Contract shall be deemed to have been concluded upon receipt of Supplier's written acknowledgement stating its acceptance of Customer's order on the basis solely of such terms.

1.2 If the Work also comprises any software products including any relating documentation, then, as for these software products and documentation, the relevant "General License Conditions of Siemens, Division Energy Management for Software Products for Customers with a Seat or registered Office outside of Germany" shall apply exclusively for the software product. The Customer may receive these General License Conditions for Software Products upon request.

1.3 In any case, Customer shall have only the non-exclusive right to use software in machine-readable object code form in connection with the Work and as specified in the operation documentation, if any. Customer may transfer its rights in the software only in connection with the sale or other transfer of the Work to a third party. Customer is only allowed to make two back-up copies of such software with use thereof solely limited to the rights set forth above.

1.4 Supplier may provide partial deliveries of Work, unless the acceptance of partial Work cannot be reasonably expected from Customer taking into consideration the interests of both Supplier and Customer.

1.5 Supplier shall not be obligated to fulfil this agreement if such fulfilment is prevented by any impediments arising out of national or international foreign trade or customs requirements or any embargoes or other sanctions.

## 2. Prices and Term of Payment

2.1 Prices shall be "ex works" (Incoterms 2010) and shall exclude packing and any indirect tax, including but not limited to: property, license, sales, use, value added or similar taxes or duties applicable to the transaction or related work. Customer agrees to pay or reimburse

Supplier for any such taxes, which Supplier or its subcontractors or sub-suppliers are required to pay.

2.2 If Supplier has undertaken the assembly or installation, Customer shall bear all required incidental costs including but not limited to travel expenses and daily allowances in addition to the agreed price, unless otherwise agreed in writing.

2.3 Notwithstanding Clause 2.1, taxes, fees, duties, social security contributions and other charges which are levied on Supplier or its employees (including Supplier's subcontractors and their personnel) in connection with the performance of the Contract in the country of destination of the Work, if any, shall be borne by Customer

2.4 Payments shall be made to the bank account or payment office notified by Supplier free and clear of, and without any deduction, including but not limited to deductions of withholding tax unless Customer is required to make a payment subject to such deduction. In this case the sum payable by Customer in respect of which such deduction is required to be made, shall be increased to the extent necessary to ensure that, after the making of the required deduction, Supplier receives and retains (free from any liability in respect of such deduction) a net sum equal to the amount it would have received had no such deduction been made. Customer shall submit tax receipts of withholding tax paid to Supplier within four weeks after payment of an invoice, which was subject to withholding tax.

2.5 In the event Supplier does not receive payment from Customer when such payment has become due and payable Supplier shall be entitled to charge interest at the annual rate of 9 percentage points above the Base Lending Rate of the European Central Bank.

2.6 Solely with respect to this Contract, Customer may set off only those claims that are undisputed or have been finally determined in accordance with Clause 16.

## 3. Security Interest

3.1 Title to the Work shall remain with Supplier until each and every claim against Customer to which Supplier is entitled under this business relationship has been duly satisfied. In the event Supplier does not retain title to a Work or any portion thereof, due to whatever reasons, including but not limited to the applicable law, Customer grants

Supplier a security interest in the Work sold to secure the payment of the price by Customer as well as performance of all other obligation of Customer arising under this Contract. Customer herewith authorises Supplier to enter or notify the retention of title or, as the case may be, the security interest with public registers, books or similar records, all in accordance with relevant laws, and shall fulfil all required formalities, at Customer's costs and expense.

3.2 For the duration of the retention of title or, as the case may be, the existence of a security interest in the Work or any portion thereof, Customer shall be prohibited from giving the Work in pledge or as security, and resale shall be permissible only in the ordinary course of business and subject to the condition that Customer receives payment from its customer or retains title or, as the case may be, security interest for as long as all payment claims of Customer against its customers or clients have not been fulfilled.

3.3 In case of possession through legal right or process of the Work or similar acts or interventions by third parties which may result in Supplier losing title to or a security interest in the Work, Customer shall inform Supplier immediately thereof in writing.

#### **4. Time for Delivery and Delay**

4.1 Performance of the stipulated time for delivery is subject to the timely receipt by Supplier of all required documentation, necessary permits and releases, especially of plans to be provided by Customer, as well as fulfilment of the agreed terms of payment and all other obligations by Customer stated herein. To the extent said conditions are not fulfilled on time, the time for delivery shall be extended accordingly.

4.2 If non-performance of any obligation of Supplier is due to "Force Majeure", defined as impediments or other circumstances beyond Supplier's reasonable control, then Supplier's performance is excused and the time for delivery and/or completion is extended for the duration of the Force Majeure event and its consequences. Force Majeure events include, but are not limited to: natural disasters or catastrophic events such as epidemics, nuclear accidents, fire, flood, typhoons or earthquakes; acts or omissions by civil or military government authorities, such as foreign currency restrictions, revocation or suspension of export or import licenses, governmental priority orders, allocations or restrictions upon the use of materials or manpower; war (whether governmentally declared or otherwise), riots, sabotage or revolutions; terrorist acts, strikes or lockouts. **As a result of the Covid-19 Virus temporary delays in delivery may occur. Therefore, the delivery date (mentioned in order confirmations and quotations) is non-binding. The delivery is subject to uninterrupted supply chain, production and logistics. The delivery may have to be postponed. Also, we have to reserve the right to partial delivery.**

4.3 If Supplier is responsible for a delay in delivery or completion and Customer can prove that it suffered a loss from such delay Customer may claim liquidated damages of 0.5% of the price of that part of the Work, which, because of the delay, could not be put to the intended use for every completed week of delay.

4.4 Subject to Clause 15.2 payment of the liquidated damages pursuant to Clause 4.3 shall be the exclusive remedy of Customer for delay and under no circumstances shall the total aggregate liability of Supplier exceed the lesser of 5% of the price of that Work, which, because of the delay, could not be put to the intended use, or 100,000 Euro.

4.4 If dispatch or delivery is delayed at Customer's request by more than one month after notice was given of the readiness for dispatch by Supplier, Supplier may charge Customer storage costs for each commenced month thereafter of 0.5 % of the price of the respective Work. In the event Customer suspends the provision of the Work, Customer shall reimburse Supplier all additional costs and expenses incurred due to such suspension.

#### **5. Transfer of Risk**

5.1 In the event the Works delivered by Supplier are erected by Customer or Customer's subcontractors, and irrespective whether such erection is supervised by Supplier or whether Supplier advises on the erection of the Work, and/or whether the commissioning or performance tests are carried out by Supplier or with the assistance of Supplier, the risk of accidental loss and damage to the Works shall transfer in accordance with the applicable law and the latest upon delivery of the Work or any portion thereof pursuant to Clause 7 or their acceptance pursuant to Clause 8.

5.2 If the dispatch, the delivery, the beginning or completion of assembly or erection, the taking over of Customer's own service or the trial run is delayed for reasons within Customer's responsibility, or if Customer has failed for other reasons to accept delivery, the risk of accidental loss or damage to the Work shall transfer to Customer on the date when it would have passed but for such events or failure of Customer.

#### **6. Work on Site**

Unless otherwise agreed in writing, assembly, installation, commissioning and testing of the Work or any portion thereof outside Supplier's own workshop or factory shall be subject to the following provisions:

6.1 Customer shall provide at its own expense and in a timely manner:

a) All earth-moving and construction work and other ancillary services not specific to Supplier's trade as well as the necessary skilled and unskilled labour, materials and tools;

b) The equipment and materials necessary for Supplier's performance of the Work such as scaffolding, lifting equipment etc.;

c) Electrical and other energy including but not limited to fuels and lubricants as may be required, water at the point of use, including connections, heating, and lighting;

d) Suitable, dry and lockable rooms of sufficient size at the site for the storage of machine parts, apparatus, materials, tools etc. and adequate working and recreation rooms for the Supplier's and its subcontractors', if any, personnel, including telephones and communication lines appropriate sanitary facilities. Furthermore, Customer shall take all reasonable measures for the protection of the property of the Supplier and its assembly personnel;

e) Protective clothing and protective devices, which are needed because of particular conditions on the site; and f) All health and safety measures required to protect Supplier's and its subcontractors', if any, personnel on the site.

6.2 Before the start of Work, Customer shall

a) make available, at its own cost and expense, all necessary information concerning the location of concealed electric power, gas and water lines or of similar installations as well as all required data concerning static and sub-surface conditions of the site, and

b) provide all necessary materials and equipment to start work at the site and carry out all preparations to such a point that the assembly or installation can be started as agreed and carried out without interruption. Access roads and the site shall be clear and prepared for erection, assembly or installation of the Work.

6.3 Customer acknowledges that the performance of the Work at the site, if any, may involve the generation of hazardous waste as such term is defined in the applicable law (hereinafter referred to as "Hazardous Waste"). In the event that Work needs to be performed on site or close to the site Customer shall at its expense furnish Supplier with containers, which meet all relevant legal and/or regulatory requirements for Hazardous Waste use and shall designate a waste storage facility at the site where such containers are to be placed by Supplier. Customer shall handle, store and dispose of Hazardous Waste in accordance with applicable law(s).

6.4 If Work is delayed by circumstances for which Supplier is not responsible, Supplier shall be entitled to an equitable adjustment in schedule, price and other pertinent provisions of the Contract.

6.5 For any Work performed by Supplier (and its subcontractors, if any) on a time and material or other cost reimbursable basis, Customer shall certify to Supplier, at weekly intervals, the hours worked by Supplier's (and its subcontractors') personnel and shall promptly confirm in

writing the completion or progress of the Work as applicable.

## 7. Taking Delivery of Hardware

7.1 Notwithstanding Clauses 8 and 9, Customer shall be obliged to accept delivery unless the Work is visibly and substantially defective, and Customer provides Supplier specific written notice thereof within 3 days of delivery of such Work.

7.2 Upon taking delivery or receipt of shipping documents, Customer shall check the Work and shall notify the last carrier with a copy to the Supplier of any damage caused to the Work by the transport or objections regarding forwarding or transport.

## 8. Acceptance

8.1 Notwithstanding Clause 7.1, Customer shall accept Work including engineering, erection, assembly, commissioning and testing separately upon their respective completion.

8.2 In the event the Work comprises the delivery of hardware, its complete assembly and erection as well as the commissioning of the Work outside Supplier's own workshop or factory the Work or said portion thereof shall not be deemed to be completed until accepted by Customer.

8.3 Notwithstanding Clauses 8.1, 8.2 and 9, acceptance of Work comprising services including but not limited to scheduled outage services or maintenance services, irrespective of whether or not such services comprise the installation or provision of hardware or software, shall be deemed to be given after performance of the respective services.

8.4 If, after completion, Supplier requests acceptance of the Work or a portion thereof, Customer shall provide such acceptance in written form within two weeks of Supplier's request. Failing Supplier's receipt thereof and in the time frame indicated the Work shall be deemed to be accepted. The same shall apply if Customer refuses acceptance, but does not state the reasons therefore in writing within two weeks after receipt of Supplier's request. The reasons to be stated by Customer shall at least comprise what Work Customer deems not to be finished or substantially defective and why Customer is of such opinion. Furthermore, deemed acceptance shall occur if the Work or any portion thereof is put to use by Customer.

8.5 Customer shall not be entitled to refuse acceptance in case of a) defects which only insignificantly impair the use of the respective Work, b) minor deviations of the Work from the specification of the Work, c) defective installation or erection not carried out by Supplier, or d) inappropriate

foundation or particular external influences not explicitly assumed to have an impact on the Work.

8.6 If Work or any portion thereof is ready for delivery or performance and cannot be delivered or performed due to reasons beyond Supplier's control, acceptance shall be deemed to have taken place upon Supplier's notification to Customer of readiness for delivery or performance.

8.7 In the event performance tests, functional tests, and/or trial runs are to be carried out by Supplier after the Work has been accepted pursuant to Clauses 7 and/or 8.3 and 8.6, any acceptance already granted to the Works shall not be affected by any failure to pass said tests.

8.8 All costs and expenses for activities of Customer or any third party with regard to inspections, tests, approvals, acceptance procedures and the like shall be borne by Customer.

## 9. Defects Liability

Supplier shall be liable to Customer for defects including any non-conformity with express warranties or the failure to meet guarantees as follows:

9.1 Supplier shall, at its option, at the place of the transfer of risk repair any defect or re-perform or replace any Work or any portion thereof that are defective provided the defect is due to circumstances that existed before the transfer of risk occurred.

9.2 Supplier's warranty does not apply to defects a) which do not entitle Customer to refuse acceptance pursuant Clause 8.5, b) defects in expendable and/or consumable parts regularly replaced due to normal wear and tear arising after the transfer of risk, c) nonconformities caused by faulty or negligent handling, excessive strain, or other abuse by Customer or any third party, d) noncompliance with the instructions contained in the operation and maintenance manuals of the original equipment manufacturer, or e) non-reproducible software errors.

9.3 To the extent Supplier has incurred cost or expenses, Supplier shall be entitled to compensation in the event the defect notified by Customer to Supplier is subsequently determined to (a) not exist or (b) if Supplier is not responsible for the notified defect.

9.4 Supplier shall be given adequate time and opportunity to remedy the defect. For this purpose, Customer shall grant Supplier working access to the non-conforming Work, including disassembly and reassembly, without cost to Supplier.

9.5 Except for the express warranties stated in the Contract, Supplier disclaims any other express or implied warranties, including but not limited to implied warranties of merchantability and fitness for a particular purpose, or otherwise.

9.6 Supplier shall not be liable a) if Customer or a third party carries out modifications or repairs to the Work, b) if Customer does not notify Supplier during the defect liability period in writing of a defect without undue delay after Customer's discovery or after Customer should have discovered the respective defect if Customer had exercised due care, c) if Customer has not immediately taken all appropriate steps to mitigate a damage caused by a defect, or d) if Customer prevents Supplier from remedying a defect.

9.7 The defects liability period including but not limited to the defects liability period for repairs or replacement of Work under warranty shall be 12 months from the earlier of:

a) the date the transfer of risk to Customer occurred, or

b) completion of the respective Work, in the event the Works are performed, assembled or erected by Supplier under this Contract outside the Supplier's or its subcontractors' own workshop or factory.

9.8 Supplier's liability for damages caused to the Work by defects or remedial work carried out by Supplier shall be limited to the extent of Supplier's negligence and only then to the lesser of: a) Customer's property all risk insurance deductible, or b) 250,000 Euro per occurrence with an aggregate limit of two (2) occurrences per year.

9.9 Except as expressly provided in this Clause 9, any other defects liability remedies or claims of Customer including any right to terminate or rescind from the Contract or to obtain restitution because of a material error/mistake concerning the Work, shall be excluded. In particular, Customer shall not be entitled to challenge the Contract for material error, including any challenge of the Contract for an error related to defects of the Work. Clause 12 shall remain unaffected.

## 10. Intellectual Property

10.1 For cost estimates, drawings and all other documents (hereinafter referred to as "Documents"), Supplier reserves all rights, title and interest in all intellectual property rights including but not limited to patents or copyright (hereinafter referred to as "Intellectual Property Rights").

10.2 In the event a third party, because of an infringement of an Intellectual Property Right by the Work asserts legitimate claims against Customer, Supplier's liability towards Customer shall be as follows:

a) Supplier shall, at its own option and expense, either: (i) obtain a right to use the Work, (ii) modify the Work so as not to infringe the Intellectual Property Rights, or (iii) replace the relevant Work. If none of the foregoing is reasonably determined by Supplier to be possible to accomplish, Supplier shall take back the relevant Work and refund the price received for such Work.

b) Supplier's obligations in Clause 10.2 a) are subject to the following conditions: (i) Customer has immediately notified Supplier in writing of the claims asserted by the third party and has furnished Supplier with a copy of each communication, notice or other action relating to the alleged infringement, (ii) Customer has not acknowledged an infringement and has provided Supplier with authority, information and assistance necessary to defend or settle such claim as Supplier shall determine, and (iii) Supplier is given sole control of the defence (including the right to select counsel), and the sole right to compromise and settle such claims. If Customer stops using the Work or any relevant portion thereof to reduce the damage or for other important reasons, it shall be obliged to make it clear (in writing) to the third party that the suspended use does not mean acknowledgment of an infringement of Intellectual Property Rights.

10.3 Claims of Customer shall be excluded if Customer (including its agents, employees or contractors) is responsible for an infringement of Intellectual Property Rights.

10.4 Claims of Customer shall also be excluded if the infringement of Intellectual Property Rights was caused by specific demands of Customer, by a use of the Work not foreseeable by Supplier or by the Work (or any portion thereof) being altered by Customer or being used together with products not provided by Supplier.

10.5 This Clause 10 sets forth Supplier's entire liability for infringement of third party Intellectual Property Rights. Any further rights and remedies of Customer (including Customer's right to claim damages) shall be excluded.

10.6 Customer may use any Document or other information which contains Intellectual Property Rights and which has been provided by Supplier only for the purpose of operation and maintenance of the Work. Customer shall not disclose such Documents or information to third parties and shall not use them for other purposes, including but not limited to the reproduction of the Work (or any portion thereof) or the engineering including but not limited to reverse engineering and/or manufacturing of any components, equipment or parts. Customer's obligation shall survive the expiration or termination of this Contract.

## **11. Impossibility of Performance**

11.1 If it is impossible for Supplier to carry out the Work for reasons for which it is responsible, Customer shall be entitled to terminate the Contract with regard to that portion of the Work, which, owing to such impossibility, cannot be put to the intended use. Customer's claim for damages shall be limited to 10% of the price of such portion of the Work. Payment of liquidated damages pursuant to Clause 4.3 for late performance with regard to said (portion of the) Work shall be taken into consideration in the calculation of this amount.

11.2 Notwithstanding Clause 4, in case of changes of the applicable law or other relevant laws or changes of the engineering standards having a substantial impact on the content of the Work or its performance or considerably affect Supplier's business or in case of Force Majeure as defined in Clause 4.2, the Contract shall be equitably adapted in order to account for the changed circumstances, including but not limited to an increase of the total price agreed for the provision of the Work under this Contract as at the date of this Contract (hereinafter referred to as "Contract Price"). Where in the reasonable opinion of the Supplier this is not economically reasonable, Supplier shall have the right to terminate the Contract. Notwithstanding any other provision in this Contract, Supplier shall be entitled to terminate the Contract when a Force Majeure event has continued for more than 180 days. Any such termination shall be without liability to Supplier.

11.3 If Supplier exercises the right of termination set forth in Clause 11.2, Supplier shall notify Customer in writing without undue delay after having become aware of the significance of the event. This notification requirement shall apply even where at first an extension of the time for delivery has been agreed between the Parties.

## **12. Limitation of Liability**

Notwithstanding any other provisions of this Contract, the following provisions shall exclusively govern the liability of Supplier, regardless of the legal theory upon which it is based including but not limited to liability in Contract, in tort (including wilful misconduct, negligence or strict liability), under warranty or otherwise:

12.1 Supplier shall under no circumstances be liable for: a) indirect, consequential, incidental, punitive or special damages; b) loss of production, loss of profit or revenue, payment of interest and other financing expenses, loss of information and data, loss of use of equipment power system, cost of purchase or replacement power; c) subject to Clause 9.8 loss of or damage to property or d) for claims by Customer for damages of Customer's purchasers or clients.

12.2 Under no circumstances shall Supplier's total aggregate liability towards Customer exceed the Contract Price or the amount of 500,000 Euro, whichever is lower.

12.3 If Work is to be performed at or delivered to any location owned or operated by a third party, and in the event such third party or property owner adjacent to such location claims damages from Supplier for damage caused to its plant or property, Customer shall indemnify and hold harmless Supplier against and from any liability to said third party in excess of the limitation of liability of Supplier under this Clause 12.

12.4 The limitations of liability set forth in Clause 12.1, 12.2 and 12.3 above shall not apply a) in cases of wilful misconduct and gross negligence of Supplier's board of directors, but they do apply in the case of wilful misconduct

and gross negligence of any other party acting for Supplier, including without limitation Supplier's subcontractors, suppliers, agents and employees; or b) if liability is mandatory.

12.5 Claims for damages are subject to a limitation period of one year from the date on which the claim accrued.

12.6 Any and all liability of Supplier under this Contract shall cease with the expiry of the defects liability period specified in Clause 9.7.

12.7 These limitations of liability shall also apply for the benefit of Supplier's subcontractors, suppliers, agents, advisors, directors and employees.

### **13. Transfer**

13.1 Prior to the transfer to a third party of the Work or of any part of the Work, Customer shall obtain written assurances from its contracting party or, as the case may be, the transferee with respect to the limitation of and protection against liability in favour of Supplier, at least equivalent to the limitation afforded to Supplier in Clause 12. Customer shall indemnify and hold harmless Supplier against any liabilities incurred by Supplier in excess of those that would have been incurred had Customer fulfilled its obligation arising out of this paragraph.

13.2 Supplier may transfer the rights and duties arising from the Contract to a third party. This transfer does not become effective if the Customer objects to said transfer within 4 weeks of receipt of such notification. This shall be pointed out by Supplier in the notification.

### **14. Confidentiality**

14.1 Customer having received Documents, know-how, data or information identified by Supplier as confidential (hereinafter referred to as "Confidential Information") agrees not to reproduce or disclose Confidential Information to any third party, without the Supplier's prior written consent, and not to use Confidential Information for any purpose not authorized by Supplier. Customer also agrees to appropriately instruct its employees having access to Confidential Information of Customer's confidentiality obligations and to duly restrict access of Confidential Information to employees who have a need to know it in their scope of employment. Customer agrees to carefully protect Confidential Information, and at least with the same degree of care used in protecting its similar information. Supplier shall be entitled to disclose Confidential Information to its advisors, agents, sub-suppliers and subcontractors to the extent necessary for the purpose of this Contract.

14.2 This confidentiality obligation shall not apply to data or information which: a) is or becomes part of the public domain through no fault of the recipient; b) is disclosed to recipient in good faith by a third party who has a right to make such disclosure; or c) as evidenced by recipient's

written records, is or becomes developed independently by the recipient without reliance on Confidential Information or is or has been known to the recipient prior to its disclosure by discloser; d) is required to be disclosed by law, except to the extent eligible for special treatment under an appropriate protective order and subject to the recipient's obligation to notify the discloser of the requirement in a timely manner; or e) is approved for disclosure by prior written consent of a duly authorized representative of the discloser.

14.3 The recipient's confidentiality obligation survives the expiration or termination of this Contract for so long as such information remains a trade secret.

### **15. Termination / Suspension**

15.1 A party shall be entitled to terminate this Contract by written notice, a) if any proceeding is instituted against the other party seeking to adjudicate such party as bankrupt or insolvent, or if the other party makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of the insolvency of the other party, and, in the case of any such proceeding instituted against the other party (but not by the other party itself), if such proceeding is not dismissed within 45 days of such filing, or b) if the other party is insolvent or itself files a petition seeking to take advantage of any law relating to bankruptcy, insolvency, winding up or composition or readjustment of debts, or c) material and repeated breach of contract which is not cured within a reasonable period of time after notification of the other party.

15.2 Customer shall be entitled to terminate the Contract for delay provided: a) an adequate extension of time granted to Supplier has not resulted in completion and/or delivery, b) the aggregate limit specified in Clause 4.4 has been reached, and c) Supplier has not voluntarily paid liquidated damages pursuant to Clause 4.3 in excess of the aggregate limit specified in Clause 4.4 above within 10 business days after receipt of a notice of termination issued by Customer.

15.3 In the event any of the following occurs Supplier may at its option suspend the provision of its obligations under this Contract:

a) Customer fails to make payment of any amount within 30 days after it has become due and payable, or

b) Customer fails to perform its obligations necessary for the Supplier to deliver or complete the Work, or

c) Delivery and/or completion of the Work is prevented by export or other legally mandated restrictions for more than 6 months; or

d) Customer is insolvent or any proceeding as referred to in Clause 15.1 is instituted against Customer.

15.4 In the event Supplier suspends the provision of its obligations Customer shall pay Supplier all additional cost incurred due to such suspension. Supplier shall be entitled to take back the Work and Customer shall be obliged to return the Work. The taking back, the assertion of the retention of title or of a security interest or the taking possession through legal right or process of the Work by Supplier shall not mean termination of the Contract and restitution, unless expressly stated by Supplier.

15.5 Notwithstanding any other provisions of this Contract Supplier may terminate a part or the whole Contract with 30 days written notice to Customer in case the requirements set forth in Clause 15.3 a), b) or c) are given or in the event that after the conclusion of this Contract Customer at any time shall come under the direct or indirect control or direction of any other person or entity than the one that exercised this control at the time of the conclusion of this Contract.

## **16. Dispute Settlement / Applicable Law**

16.1 If a dispute arises in connection with this Contract, the responsible representatives of the Parties shall attempt, in fair dealing and good faith, to settle such dispute. Upon request of a party a senior management representative of each party shall participate in the negotiations. Each party shall be entitled to terminate these negotiations by written notification to the other party at any time.

16.2 The Parties shall attempt to agree on a procedure for Alternative Dispute Resolution ("ADR") and the applicable procedural rules (including time limits) within fourteen days after a termination notice under Clause 16.1 has been received by the other side. If the Parties fail to agree on such procedure within this time limit each party shall be entitled to refer the dispute to arbitration pursuant to Clause 16.3.

16.3 All disputes arising in connection with this Contract which are not resolved pursuant to Clause 16.1 or an ADR procedure, including any question regarding the termination or any subsequent amendment of the Contract, shall be finally settled in accordance with the Rules of Arbitration ("Rules") of the International Chamber of Commerce ("ICC").

If the value of the total matter in dispute, including the value of any counterclaims, is less than € 1 million, the tribunal shall consist of one arbitrator and if the value of the total matter in the dispute is € 1 million or more the tribunal shall consist of three arbitrators. If the Parties cannot agree whether or not the value is less than € 1 million, the ICC shall decide on the number of arbitrators on written request by one of the Parties.

If the tribunal consists of three arbitrators each party shall nominate one arbitrator for confirmation by the ICC. Both arbitrators shall agree on the third arbitrator within 30 days after their appointment. Should the two arbitrators fail to

reach agreement on the third arbitrator within the thirty-day period, the ICC shall select and appoint the third arbitrator.

The seat of arbitration shall be Zurich. The language to be used in the ADR and the arbitration proceeding shall be English.

Any production of documents shall be limited to the documents on which each party specifically relies in its submissions.

Consolidation of arbitrations pending under the Rules into a single arbitration shall only be possible if the Parties have agreed to consolidation.

The unsuccessful party shall bear the costs of the arbitral proceedings. However, the arbitral tribunal may take into account the extent to which each party has conducted the arbitration in an expeditious and cost-effective manner.

16.4 This Contract, or its subject matter, shall be subject to the substantive laws of Switzerland. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

## **17. Compliance with Export Regulations**

17.1 If Customer transfers goods (hardware and/or software and/or technology as well as corresponding documentation, regardless of the mode of provision) delivered by Supplier or works and services (including all kinds of technical support) performed by Supplier to a third party worldwide, Customer shall comply with all applicable national and international (re-)export control regulations. In any event Customer shall comply with the (re-) export control regulations of the Federal Republic of Germany, of the European Union and of the United States of America.

17.2 If required to conduct export control checks, Customer, upon request by Supplier, shall promptly provide Supplier with all information pertaining to particular end customer, destination and intended use of goods, works and services provided by Supplier, as well as any export control restrictions existing.

17.3 Customer shall indemnify and hold harmless Supplier from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any noncompliance with export control regulations by Customer, and Customer shall compensate Supplier for all losses and expenses resulting thereof, unless such noncompliance was not caused by fault of the Customer. This provision does not imply a change in burden of proof.

## **18. Miscellaneous Provisions**

18.1 Mistakes, unintended gaps and contradictions in the Contract are to be treated and construed in accordance with the spirit of this Contract on the basis of mutual trust and of the mutual interests of both parties.

18.2 In the event of legal invalidity of individual stipulations, the other parts of this Contract shall remain valid. The aforesaid shall not apply where compliance with the terms of this Contract would constitute unacceptable hardship for either party.

18.3 Customer and Supplier shall each, at their own expense in their respective countries, take such steps as may be required to satisfy any laws or requirements with respect to declaring, filing, recording or otherwise rendering this Contract valid.